

In the High Court of New Zealand  
Tauranga Registry  
I Te Kōti Matua o Aotearoa  
Tauranga Moana Rohe

CIV-2021-470-

---

*under:* the Trusts Act 2019 and Part 18 of the High Court  
Rules 2016

*in the matter of:* an application under sections 130 and 133 of the Trusts  
Act 2019 by **William Beau Holland, Natalie Anne  
Bridges, Peter John Blackwell, Peter John Farmer,  
Mark Edmond Arundel and Tina Lynn Jennen**, as  
trustees of the Tauranga Energy Consumer Trust  
*First plaintiffs*

*and in the matter* an application under section 133 of the Trusts Act 2019  
*of:* by **William Beau Holland, Natalie Anne Bridges,  
Peter John Blackwell, Peter John Farmer, Mark  
Edmond Arundel and Tina Lynn Jennen**, as trustees  
of the TECT Charitable Trust  
*Second plaintiffs*

Affidavit of William (Bill) Beau Holland

---

Dated: 13 May 2021

---

Reference: M D Arthur (michael.arthur@chapmantripp.com)  
L C Bercovitch (lora.bercovitch@chapmantripp.com)  
Counsel: Justin Smith QC (justin.smith@stoutstreet.co.nz)

chapmantripp.com  
T +64 9 357 9000  
F +64 9 357 9099

PO Box 2206  
Auckland 1140  
New Zealand

Auckland  
Wellington  
Christchurch



## AFFIDAVIT OF BILL HOLLAND

I, William (Bill) Beau Holland of Tauranga, lawyer, swear:

- 1 I am the Chairperson of the Tauranga Energy Consumer Trust (**TECT**) and of the TECT Charitable Trust (the **2002 Charitable Trust**).
- 2 I am currently a consultant at Holland Beckett Law specialising in trusts, business and property law. I was a partner of that firm for over 40 years, until 2020. I also serve and have previously served as a trustee or board member of a number of trusts, organisations and advisory groups both based in Tauranga and nationally. Those organisations include Community Foundations of New Zealand Inc, Acorn Trust and Legacy Trust.
- 3 In 2012, I was made a Member of the New Zealand Order of Merit for services to the community. In 2013, I was awarded the NZ Law Awards Community Service in Law Award (Individual). In 2015, I was awarded the Tindall Foundation Award.
- 4 I am a beneficiary of TECT, along with thousands of other consumers in Tauranga. I have lived in the Tauranga area for most of my life, and have been a beneficiary of TECT since it was created in 1993.
- 5 I was elected as a trustee of TECT and the 2002 Charitable Trust in July 2012, was re-elected in July 2016, and re-elected again in July 2020. I have been Chairperson since August 2014. In my capacity as Chairperson of TECT and the 2002 Charitable Trust I am involved in, and am familiar with, TECT's structure, current operation, and the TECT trustees' proposal to vary the terms of the trust deed.
- 6 As well as me, there are five other trustees of TECT: Natalie Bridges, Peter Blackwell, Peter Farmer, Mark Arundel and Tina Jennen. The Trustees are also the Trustees of the 2002 Charitable Trust.
- 7 I am authorised by the Trustees of TECT and the 2002 Charitable Trust to make this affidavit on behalf of the Trustees to support their claim for orders from the Court:
  - 7.1 approving the decision by the Trustees to implement a proposed restructure of TECT, including to vary the terms of the TECT trust deed, establish a new community trust, make various transfers and distributions and wind down the 2002 Charitable Trust; and
  - 7.2 as to service and representation of interested parties in this proceeding.



- 8 The Trustees have seen and unanimously approved the Court documents.
- 9 In this affidavit I will explain:
- 9.1 the basic background about TECT and the 2002 Charitable Trust;
- 9.2 the current operation of TECT and the 2002 Charitable Trust;
- 9.3 the Trustees' proposed restructure of TECT and the 2002 Charitable Trust, and the rationale for the restructure; and
- 9.4 the procedure adopted by the Trustees on their proposed restructure.
- 10 I confirm the correctness of all the factual allegations in the Statement of Claim where the pleaded matter relates to events since my becoming a Trustee of TECT. As to prior events described in both the statement of claim and this affidavit, I have drawn on my general knowledge of events supplemented from information obtained from TECT's records and documents available to it (including the documents forming exhibits to this affidavit). I confirm that to the best of my knowledge and belief the allegations relating to these matters are correct.
- 11 Annexed to this affidavit as exhibit "BH-1" is a bundle of documents, which I will refer to by the relevant tab number. Below is an index for those exhibits:

Tab	Document
1	Original Tauranga Energy Consumer Trust Deed, dated 21 December 1993.
2	Current Tauranga Energy Consumer Trust Deed, dated 21 December 1993, as amended over time.
3	Establishment Plan.
4	TECT 1998 annual report.
5	TECT 1999 annual report.
6	2002 Charitable Trust Deed, dated 27 March 2002.
7	TECT 2020 Annual Report.
8	2002 Charitable Trust financial statements for the year to 31 March 2020.



<b>Tab</b>	<b>Document</b>
9	TECT distribution plan for the year ending 31 March 2021.
10	Trustpower announcement, dated 28 January 2021.
11	TECT announcement, dated 28 January 2021.
12	Proposed TECT Community Trust Deed.
13	Proposed amended TECT Trust Deed, clean version.
14	Proposed amended TECT Trust Deed, marked up version.
15	Chapman Tripp summary of key proposed changes to the TECT Trust Deed.
16	Trustpower letter in support of the Proposed TECT Restructure, dated 18 February 2021.
17	Notice of Proposal, dated 18 February 2021.
18	Consumer Information Memorandum on the Future of TECT, dated 18 February 2021.
19	Emailed updates sent by TECT to Consumers.
20	Advertisements about the Proposed TECT Restructure.
21	TECT beneficiary feedback form.
22	Chapman Tripp memorandum to Consumers, dated 15 February 2021.
23	Screenshot of materials on TECT website.
24	Presentation shown at Consumer information sessions.
25	Management report on Consumer submissions.
26	TECT Trustees' 22 April 2021 resolution approving the Proposed TECT Restructure.
27	2002 Charitable Trust Trustees' 22 April 2021 resolution approving the Proposed TECT Restructure.
28	Trustpower announcement, dated 28 April 2021.



<b>Tab</b>	<b>Document</b>
29	Draft notice to Consumers with information about the Court application.
30	Summary of the final Proposed TECT Restructure to be sent to Consumers.
31	Draft advertisement with information about the Court application.

## **HISTORY OF TECT**

### **Trustpower**

- 12 The settlor of TECT was Trustpower Limited, a company with company number 604040. It was registered from 29 October 1993 until 7 July 2017, when it was removed (the **Settlor**).
- 13 In 2016, the Settlor and its group companies underwent a demerger. The High Court sanctioned the demerger arrangement on 19 October 2016 (CIV-2016-404-1768) pursuant to Part 15 of the Companies Act 1993.
- 14 On 31 October 2016, the arrangement was put in place, and the operation of the Settlor's group's business was separated between two existing entities:
- 14.1 Trustpower Limited (company number 565426), previously known as Bay Energy Limited (**Trustpower**); and
- 14.2 Tilt Renewables Limited (company number 1212113) (**Tilt Renewables**).

I address this further below.

### **Establishment of TECT**

- 15 TECT is an energy trust. It was established in 1993, as part of the then electricity reforms, to hold a substantial shareholding in Trustpower for the benefit of current and future electricity consumers in the district that was previously supplied by the Tauranga Electric Power Board, and (later) the Tauranga City Council electricity business. That district is located in (broadly) the Tauranga and Western Bay of Plenty region. TECT provides both rebates to electricity customers of Trustpower and support for local initiatives, facilities and events in the district. In this affidavit I will refer to that district as the **TECT Consumer District**.
- 16 TECT was established pursuant to the Tauranga Energy Consumer Trust Deed, dated 21 December 1993 (the **TECT Trust Deed**). A

copy of the original TECT Trust Deed is at **tab 1** of the bundle to this affidavit. A copy of the current TECT Trust Deed with all amendments recorded is at **tab 2** of the bundle.

- 17 TECT was set up as part of the reform of the electricity sector that took place between the mid-1980s and the late 1990s.
- 18 Prior to the mid-1980s, electricity generation and transmission in New Zealand was the responsibility of the Ministry of Energy. Local distribution and supply of electricity were the responsibility of electricity supply authorities (**ESAs**) located nationwide. The ESAs were electorally oriented, statutory monopolies. In the 1940s, there were over 90 such ESAs nationwide. By the mid-1980s, there were 61.
- 19 The Tauranga Electric Power Board (the **Board**) was one of such ESAs.
- 20 In 1986, the Government announced its intention to reform the generation and transmission of electricity. Steps taken by the Government in the late 1980s to effect the reforms focussed on:
  - 20.1 introducing separate ownership of generation and transmission of electricity; and
  - 20.2 corporatisation and privatisation of the ESAs.
- 21 In 1992, substantial reform in the electricity market was effected by various new legislation, including the Electric Power Board Amendment Act 1990, the Electricity Act 1992, and the Energy Companies Act 1992.
- 22 The Electricity Act deregulated the electricity sector by removing distributors' statutory monopolies and the obligation to supply. The deregulation was carried out in stages in 1993 to 1994.
- 23 The Energy Companies Act corporatised the ESAs. Each community had to decide what to do with the shares from their local power company. The Act required each ESA to submit an Establishment Plan by 31 December 1992 for approval by the Minister of Energy. The Establishment Plan outlined how the ESA intended to transfer its property, rights and liabilities to a newly set up energy company, as the ESA's successor. Establishment Plans also had to provide a share allocation plan for when the relevant ESA acquired the shares of its successor company.
- 24 Pursuant to the Energy Companies Act, the Board submitted its Establishment Plan. A copy of the Board's Establishment Plan is at **tab 3** of the bundle, which set out the intention for 84 million shares to be issued in a newly formed company. 50% of the shares



- would be held by a trust to be established, for the benefit of the then current and future customers of the Settlor. The majority of the remaining shares were to be transferred to consumers of the Board.
- 25 On 29 October 1993, the Settlor was incorporated.
  - 26 The Electric Power Board Amendment Act provided for the Minister of State Owned Enterprises to establish trusts to acquire shares of the ESA's successor company (which was to be formed by the Minister of State Owned Enterprises). The first trustees of the new trusts were existing board members of the ESAs who held shares when the boards were corporatised. Subsequently, trustees were to be elected.
  - 27 On 21 December 1993, the Settlor settled TECT. When it settled TECT, the Settlor was a retailer supplier and generator of electricity, and the owner of the local distribution lines.
  - 28 The TECT Trust Deed was drafted so as to provide Trustees with a range of methods by which they could deliver benefits to beneficiaries. In accordance with the Board's Establishment Plan, TECT acquired 50% of the shares in the Settlor. The majority of the remaining shares were transferred to consumers of the Board.
  - 29 The Energy Companies (Trustpower Limited) Vesting Order 1993 set 1 January 1994 as the date on which the Board's property, rights and liabilities would vest in the Settlor. The Order also vested the Board's shares in the Settlor in the then trustees of TECT, pursuant to the Board's Establishment Plan.
  - 30 When TECT was established, 100% of electricity consumers in the old Tauranga Electric Power Board supply area were beneficiaries. That did not include the customers of the Tauranga City Council electricity business.
  - 31 In 1997, the Tauranga City Council sold its electricity business to Trustpower and for some time after that there was debate as to whether the customers of that business should become beneficiaries of TECT. In 2003, after a consultation process, the Council agreed to pay compensation to TECT, and the definition of "District" in the TECT Trust Deed was amended to include consumers in the former Tauranga City Council electricity business supply area.
  - 32 Electricity market reforms continued throughout the 1990s. In 1998, Parliament passed the Electricity Industry Reform Act 1998 to effect reforms to generation, distribution and retail of electricity.
  - 33 The Act required full ownership separation of distribution (lines) businesses from supply (retail and generation) businesses. This was



- to encourage competition in generation and retailing of electricity. The Act required electricity companies to separate ownership of their line and supply businesses by 31 December 2003 and to undertake Interim corporate separation by 1 April 1999.
- 34 The Settlor chose to focus on generation and retailing of electricity, and exit the distribution business.
- 35 Following the Settlor's decision to focus on its generation and supply business, the original definition of Consumer in the TECT Trust Deed which referred to the Settlor's "distribution network" was therefore redundant. TECT elected to retain its links to the Settlor. Following a consultation process, the definition of "Consumer" was amended to refer to those people situated in the Board supply area who purchased their electricity from the Settlor.
- 36 Since its establishment, TECT's shareholding in the Settlor / Trustpower has changed, including as a result of it variously acquiring and selling certain shares. Those transactions included the 2015 sale of certain shares in the Settlor (following a Consumer Consultative Procedure), which enabled TECT to invest the proceeds in a diversified portfolio with the aim of diversifying the asset base of TECT.
- 37 The 2002 Charitable Trust was set up in 2002, as I explain below. But even before then, TECT was involved in making grants to community organisations. For example, in 1998, a large number of community organisation grants were approved to the total value of \$315,983. In 1999, over \$440,000 was distributed to community organisations. I have included the 1998 and 1999 annual reports at **tabs 4 and 5** of the bundle.
- 38 On 27 March 2002, TECT settled the 2002 Charitable Trust by way of deed (the **2002 Charitable Trust Deed**) (a copy of the 2002 Charitable Trust Deed is at **tab 6** of the bundle). The 2002 Charitable Trust was established for the benefit of all customers of the Settlor who are bodies or institutions (whether incorporated or not) formed to promote a charitable purpose (within the meaning of the Charitable Trusts Act 1957) and who are located in the TECT Consumer District. The definition of "Consumer" in the TECT Trust Deed was amended so that the 2002 Charitable Trust was added as a beneficiary of TECT.
- 39 Also in 2002, the TECT Trust Deed was amended to include a broader community object as part of the Trustees' distributive powers. As I have said, by then TECT already had a practice of making grants to achieve a community benefit.
- 40 As I described earlier, in 2016, the Settlor and its group companies underwent a demerger. In the demerger:





- 40.1 Hydro-electricity generation assets and retail business supplying electricity, gas and telecommunications services were transferred to the new Trustpower.
- 40.2 Wind and solar assets were transferred to Tilt Renewables and its subsidiary.
- 41 The demerger was accomplished by allocating assets, liabilities and contracts existing under the Settlor's group between these two entities.
- 42 The demerger did not affect the functions of TECT. At the time of the demerger, the definition of "Company" in the Trust Deed was changed to include the new Trustpower and to exclude Tilt Renewables and its subsidiaries. The effect of this was to ensure that the definition of Consumers in the TECT Trust Deed remained linked to electricity customers of the new Trustpower in the TECT Consumer District.
- 43 TECT became a shareholder of the new Trustpower and of Tilt Renewables. TECT subsequently sold its shares in Tilt Renewables and the sale proceeds became part of TECT's diversified investment portfolio. As I explain further below, TECT is currently a substantial shareholder holding 26.8% of the shares in Trustpower.

#### **CURRENT OPERATION OF TECT**

##### **Beneficiaries**

- 44 There are currently approximately 49,000 TECT Consumers, all of whom are eligible to receive benefits under the TECT Trust Deed. Those Consumers own approximately 53,000 Installation Control Points (ICPs) in the TECT Consumer District, and comprise approximately 58% of electricity consumers in that area.
- 45 TECT relies on Trustpower's records to obtain details of the beneficiaries. Every month, Trustpower provides to TECT details of its customers in the TECT Consumer District. Those are our beneficiaries. We use that data to arrange payment of the rebates. For many, but not all, the information includes email addresses. At present we have email addresses for about 37,600 of our beneficiaries. We send monthly newsletters to those beneficiaries for which we hold email addresses.

##### **Trustees**

- 46 The TECT Trust Deed requires TECT to have six trustees, who are elected by Consumers for a four-year term. The terms of appointment of trustees are staggered, so that three trustees retire every two years. To be elected, every Trustee must be a beneficiary of TECT.

- 47 The next election of trustees is scheduled to be held in 2022.
- 48 The 2002 Charitable Trust Deed provides that the trustees of that trust shall be the same as the TECT trustees. TECT trustees are automatically appointed as trustees of the 2002 Charitable Trust when elected as trustees of TECT. Similarly, when they cease to be trustees of TECT, they cease to be trustees of the 2002 Charitable Trust.

**Structure and portfolio**

- 49 TECT and the 2002 Charitable Trust each holds various assets, including via TECT Holdings Limited, being a company that is wholly owned by TECT and which holds the shareholding in Trustpower. Collectively these entities form the TECT group. The TECT group also includes TECT Property Limited, which no longer holds any material assets and will be wound up as part of normal operations.
- 50 The TECT group has five staff members: a General Manager, and a team which manages operations, grants, investments and communications. No staff member is a Trustee.
- 51 As reported in the audited consolidated financial statements to 31 March 2020, the overall portfolio across the TECT group (net of liabilities) was valued at \$871,027,375. The total assets of \$880,676,313 were made up of approximately:
- 51.1 61% (\$537m) held in Trustpower shares; and
- 51.2 39% (\$344m) held in diversified investments and other assets. Approximately \$193m of those assets were held by the 2002 Charitable Trust.
- 52 I have included TECT's 2020 audited annual report at **tab 7** of the bundle, and a copy of the 2002 Charitable Trust's audited financial statements at **tab 8**. I expect that TECT will have the March 2021 accounts finalised by mid-June 2021, and I will update the Court in due course with a copy of that annual report. The Trustees expect that the 2021 annual report will show a material increase in the value of the TECT group's assets following post-Covid recovery in the sharemarkets.
- 53 TECT's current shareholding in Trustpower represents 26.8% of the shares in Trustpower. All of the Trustpower shares held by TECT are owned by TECT Holdings Limited.
- Distributions to Consumers**
- 54 TECT's income and capital is used to provide benefits to beneficiaries (referred to as "Consumers") during the term of the trust.

- 55 Consumers are defined in the TECT Trust Deed as:
- 55.1 a person who is named in the records of Trustpower as being liable to pay any amount for electricity supplied to a premises located in the District. The District is defined as the territory over which the Board was authorised to supply electricity immediately prior to 1 January 1994 and the territory over which Tauranga Electricity Limited was authorised to supply electricity prior to its merger with the Settlor in 1997 (i.e. the TECT Consumer District as I have described it);
  - 55.2 the 2002 Charitable Trust; or
  - 55.3 any other entity wholly owned or controlled by TECT and whose beneficiaries and objectives are substantially the same as TECT's;
- (Consumers).**
- 56 In accordance with current TECT's policy, the TECT Group provides benefits to Consumers in two ways:
- 56.1 directly, through the TECT rebate sent to Consumers each year. Traditionally the rebate was paid annually. Based on feedback, however, in 2020 the Trustees decided to pay the rebate out in two instalments: 50% in July and 50% in December. The averaged median payment for the last five years was approximately \$500 per Consumer per annum. The amount distributed through the rebate comprises approximately 80% of the total distribution; and
  - 56.2 indirectly, via grants and donations to community organisations and charities throughout the TECT Consumer District. TECT, the 2002 Charitable Trust and TECT Holdings Limited make grants and donations in the education, arts, sport, recreation, environment, energy efficiency, heritage, health and social services areas. The amount distributed via such grants and donations is approximately 20% of the total distribution.
- 57 Each year TECT publishes its proposed Annual Distribution Plan for feedback from Consumers. TECT's distribution plan for the year ending 31 March 2021 is at **tab 9** of the bundle.
- 58 Overall, TECT aims to distribute at least 75% of the TECT group's current annual net income.
- 59 Since TECT was established, the TECT group has distributed approximately \$440 million directly to Consumers and \$122 million to community organisations and initiatives.

- 60 Prior to 2008, TECT's income distribution mix was agreed on an annual basis. In 2008, the Trustees formalised a policy whereby approximately 80% of distributions were to be distributed directly to Consumers, and the balance was to be distributed through the grants scheme to eligible community groups.
- 61 In 2009, the Trustees put a non-binding poll to Consumers on whether they wanted 100% of funds to be distributed to individual beneficiaries, with no grants at all to community groups. Consumers overwhelmingly voted against that proposal. 31,941 Consumers voted on the proposal (of the then 54,664 eligible voters). Of those voting, 78.55% voted to reject the proposal that TECT's funds be used only for payments direct to Consumers.
- 62 In 2018, the Trustees consulted with Consumers on a proposal to end the issuing of the annual TECT rebate. Instead of continuing the rebate, TECT proposed to provide Consumers a lump sum payment and then five more years of rebates, after which it would have a 100% focus on charitable and community contributions. At that time, there were approximately 58,000 Consumers, and the Trustees received 21,000 submissions from Consumers on the proposal. Trustpower was also strongly opposed to it and threatened injunction proceedings. The clear message from the community through the consultation process was that Consumers wanted to retain the annual rebate scheme. Ultimately, following that feedback and in all the circumstances the Trustees decided not to proceed with the proposal to remove the rebate.

### **PROPOSED VARIATION OF THE TRUST DEED**

#### **Trustpower strategic review**

- 63 On 28 January 2021, Trustpower announced it was undertaking a review of its retail business. The announcement explained that Trustpower's review is to test market interest in its retail business, while also exploring the merits and business case to establish a standalone generation business. A copy of the announcement is at **tab 10** of the bundle.
- 64 A potential outcome of the strategic review is a sale by Trustpower of its retail business.
- 65 Trustpower alerted TECT to its likely strategic review and potential sale of the retail business in advance of that announcement. Before the public announcement the Trustees began considering how TECT might respond.
- 66 As I have stated above, approximately 61% of TECT's assets are the shares it holds in Trustpower. TECT's role as a shareholder of Trustpower means that the Trustees are required to properly

consider any change to Trustpower and the impact of that change on TECT.

- 67 If a sale of Trustpower's retail business proceeds, changes to the TECT Trust Deed will be required because:
- 67.1 the current retail and consumer customers of Trustpower's retail business would cease to be Consumers under the TECT Trust Deed (approximately 49,000 Consumers);
  - 67.2 the only Consumers of Trustpower for the purposes of the Trust Deed would be the small number of larger commercial and industrial electricity customers (approximately 150 Consumers) retained by Trustpower in the TECT Consumer District; and
  - 67.3 the only remaining beneficiaries under the TECT Trust Deed would therefore be the 2002 Charitable Trust and the small number of larger commercial and industrial electricity customers.
- 68 That outcome would mean that TECT would no longer be able to be administered in a way that is consistent with its terms and objectives. If a sale proceeds, some form of change to the TECT Trust Deed will be required.
- 69 To that end, also on 28 January 2021, TECT announced that the Trustees were well advanced in developing a proposal that outlines the changes to TECT's structure needed to meet the purpose of the TECT Trust Deed, and to ensure that the best interests of TECT and its beneficiaries are protected. TECT's announcement is at **tab 11** of the bundle.
- Proposal to restructure TECT**
- 70 Having considered the information from Trustpower about its strategic review, the Trustees unanimously agreed that there was a need to consult with Consumers on a proposal for TECT to change, whether or not a sale by Trustpower occurs.
- 71 Primarily, the Trustees believed that a proposal to restructure TECT was necessary because Trustpower's review indicates that it is unlikely to remain the owner of the retail business possibly in the very short term but almost certainly for the entire remaining life of TECT.
- 72 There are other structural issues that reinforced the Trustees' belief that it should consider, and propose to Consumers, a potential change to TECT. Those matters are described at page 9 of the Trustee's proposal on the future of TECT, which I explain below, and include the following:

- 72.1 The numbers of Consumers are reducing over time. When TECT was formed, it served all consumers connected to the electricity lines within its (then) district. By 31 December 2020, it served only about 59% of consumers in the TECT Consumer District, and the percentage is declining each year. At present, that figure has fallen to approximately 58%.
- 72.2 There is a tension between the making of grants and the declining numbers of Consumers. Grants should provide benefits to Consumers principally, which is getting harder with fewer Consumers over time.
- 72.3 The Trustees need to balance current and future beneficiaries of TECT. As a consequence of the coming into force of the new Trusts Act 2019, TECT now has a total life of 125 years, which arguably places more emphasis on future beneficiaries.
- 73 On 29 January 2021, the Trustees unanimously agreed on a preferred restructure proposal to put to Consumers under the Consumer Consultative Procedure (the **Proposed TECT Restructure**).
- 74 In the Proposed TECT Restructure:
- 74.1 TECT would continue, but the TECT Trust Deed would be substantially amended, to provide that TECT would exist for the sole purpose of paying rebates to existing Consumers under the TECT Trust Deed (and not any new customers) for up to 30 years;
- 74.2 a new charitable trust would be established which would be the primary vehicle to hold and manage TECT's assets and benefit the local community in Tauranga and the Western Bay of Plenty through, primarily, donations and grants; and
- 74.3 the 2002 Charitable Trust would be wound up.
- 75 More specifically, to give effect to the Proposed TECT Restructure, the following would occur:
- 75.1 **Establish a new charitable trust:** a new charitable trust would be established for charitable purposes which benefit the community in Tauranga and the Western Bay of Plenty, primarily through donations and grants (the **TECT Community Trust**).
- 75.2 The trustees of the TECT Community Trust would be elected on periodic election cycles in the same way as for current TECT trustees. The electors, however, would be widened to all persons registered on the Parliamentary electoral rolls and



having an address in Tauranga and the Western Bay of Plenty (whereas, currently, eligible voters for TECT trustee elections are the TECT Consumers). Two additional trustees may be appointed by the elected trustees.

- 75.3 The boundaries of the district would be slightly broader than the boundaries of the current TECT Consumer District. The TECT Community Trust would cover the area currently administered by the Tauranga City Council and the Western Bay of Plenty District Council.
- 75.4 The proposed TECT Community Trust Deed is at **tab 12** of the bundle.
- 75.5 **Variation to the TECT Trust Deed:** TECT would remain in existence but would be renamed the **TECT Consumer Trust**.
- 75.6 The TECT Trust Deed would be amended under clause 13.2 of that deed, and TECT would continue in existence for the sole purpose of paying electricity rebates to a fixed class of beneficiaries, being:
- (a) the retail customers of Trustpower on 28 January 2021 (being the date that Trustpower announced the strategic review, the **Record Date**) for so long as each of them continues as a customer of Trustpower or the purchaser of Trustpower's retail business (or any subsequent purchaser) in the TECT Consumer District; and
  - (b) the commercial and industrial customers of Trustpower on the Record Date for so long as each of them continues as a customer of Trustpower or of the purchaser of Trustpower's retail business (or any subsequent purchaser) in the TECT Consumer District.
- No new customers of Trustpower or of Trustpower's retail business (irrespective of who owns it) would receive rebates.
- 75.7 The rebate would be \$500 a year for the first ten years, would increase to \$600 in 2030 and increase further to \$700 in 2040, to take account of inflation.
- 75.8 There would be an end date for rebates of 2050.
- 75.9 TECT would retain an amount as a separate fund for the purpose of paying a yearly rebate to the beneficiaries until up to the end of 2050. TECT would loan that amount to the TECT Community Trust by way of an interest-bearing loan, and repayments of the principal of the loan and interest

would fund the rebate payments. TECT would only be able to use its funds to pay rebates, and its proper expenses.

- 75.10 The Trustees have considered the amount that TECT will need to retain in order to pay continued rebates until 2050. The Trustees sought advice from KPMG and Findex Corporate Finance (Aust) Ltd on the question.
- 75.11 The amount required depends on two key assumptions. The first is about the expected churn; namely how many existing consumers are expected to remain customers of the current Trustpower business over the 30 year period. The second is the rate of return to be generated on the loan.
- 75.12 The Trustees obtained information from Trustpower as to the historic churn rates. Based on those rates and assuming a consistent 3% rate of interest, the advice the Trustees obtained was that the amount required was in the order of \$291 million to \$413 million. That range reflected different assumptions about churn rates.
- 75.13 The Trustees decided to use the top figure in the range. However, the range itself could change if the interest rate assumption changes. The interest rate cannot be set until further tax advice is obtained. KPMG are working on that advice and are liaising with Inland Revenue.
- 75.14 The Trustees have therefore yet to finalise the exact amount of the loan / retention, but intend to adopt the highest figure of the range (whatever the range may be, depending on the interest rate) in order to maximise the amount available for the rebates.
- 75.15 Although the Trustees cannot guarantee there being sufficient funds to pay the rebates until 2050, they have deliberately adopted a very conservative approach by retaining the highest figure of the range, in the expectation that this is likely to be considerably more than will be required.
- 75.16 The trustee governance structure of TECT, as amended, would be substantially the same as that currently in place. One difference would be that the procedures for the election and appointment of trustees would be contained in the trust deed of the TECT Community Trust, and trustees elected or appointed under that deed would automatically become trustees of TECT (and would cease to be trustees of TECT when they cease to be trustees of the TECT Community Trust). This is, in effect, the same mechanism as is currently utilised to ensure the trustees of TECT and the 2002 Charitable Trust are the same.





- 75.17 The proposed TECT Trust Deed, as amended, in clean and marked up versions, is at **tabs 13 and 14** of the bundle (the **TECT Consumer Trust Deed**). A summary of the key proposed variations to the existing TECT Trust Deed, prepared by Chapman Tripp, is at **tab 15**.
- 75.18 **Transfer of assets to the TECT Community Trust:** TECT would transfer the balance of its assets, including TECT's shareholding in Trustpower held through TECT Holdings Limited, to the TECT Community Trust.
- 75.19 All the assets and liabilities of the 2002 Charitable Trust would be distributed to the TECT Community Trust.
- 75.20 The TECT Community Trust would invest those assets, and the funds loaned to it by TECT, in a variety of investments to generate returns.
- 75.21 In 2050, TECT would be wound up and any remaining assets distributed to the TECT Community Trust. This may occur earlier if at any time TECT has insufficient assets to continue to pay rebates (for example if the amount retained by TECT was exhausted).
- 75.22 **2002 Charitable Trust:** The 2002 Charitable Trust would be wound up.
- 76 The Trustees are obtaining advice from KPMG on exactly how to transfer and hold the various assets in an appropriate and efficient way. That process would be likely to include the following steps and distributions:
- 76.1 a transfer of TECT Holdings Limited (which holds TECT's Trustpower shares) and various other assets from TECT to the TECT Community Trust;
- 76.2 inter-entity advances would be repaid;
- 76.3 a loan would be established from TECT to the TECT Community Trust, and otherwise its assets would be transferred to the TECT Community Trust;
- 76.4 the 2002 Charitable Trust's assets would be distributed to the TECT Community Trust.
- Trustpower support**
- 77 Trustpower has advised that it supports the Proposed TECT Restructure. On 18 February 2021 Trustpower announced that the TECT consultation plan is appropriate, and preserves customers' rights. That announcement is at **tab 16**.

**PROCEDURE ADOPTED BY THE TRUSTEES FOR THE PROPOSED TECT RESTRUCTURE**

**Consumer Consultative Procedure**

78 The Proposed TECT Restructure required the Consumer Consultative Procedure in the TECT Trust Deed to be followed, as a precursor to an amendment to the TECT Trust Deed to implement the restructure.

79 The Consumer Consultative Procedure took place as follows.

*Notice of the Proposed TECT Restructure*

80 On 29 January 2021, the Trustees placed a notice of the Proposed TECT Restructure before a meeting of the Trustees. The Trustees' resolved to issue the notice of proposal and commence the Consumer Consultative Procedure on the Proposed TECT Restructure.

81 On 18 February 2021, the Trustees gave notice of the Proposed TECT Restructure to Consumers by publishing a two page notice entitled "Notice of Proposal" (the **Notice**) and a consumer information memorandum on the Proposed TECT Restructure titled "The Future of TECT" (the **CIM**). The Notice is at **tab 17** of the bundle, and the CIM is at **tab 18**.

82 The Trustees:

82.1 made copies of the Notice and the CIM available for inspection at TECT's offices;

82.2 published a copy of the Notice and the CIM on TECT's website;

82.3 mailed a copy of the Notice to every Consumer;

82.4 emailed details of the Proposed TECT Restructure, with a link for Consumers to inspect the Notice and access additional information about the Proposed TECT Restructure, to every Consumer for whom TECT has a current email address (about 37,600 of our 48,500 beneficiaries). The Trustees also emailed updates during the consultation process. Copies of those email updates are at **tab 19** of the bundle; and

82.5 advertised details of the Proposed TECT Restructure with a link for Consumers to access information about the Proposed TECT Restructure, including the Notice, in the Bay of Plenty Times and the Weekend Sun. Copies of those advertisements are at **tab 20** of the bundle.

83 The Notice and TECT's website stated that:

83.1 Consumers could make written submissions on the Proposed TECT Restructure to the Trustees until 4pm on 22 March 2021. An example of the TECT beneficiary feedback form, which was made available for Consumers to make written submissions on the Proposed TECT Restructure, is at **tab 21** of the bundle; and

83.2 hearings of Consumers' oral submissions would be held on 25 and 26 March 2021.

*Additional information about the Proposed TECT Restructure*

84 In addition to the notice required under the Consumer Consultative Procedure, the Trustees also made available for inspection at the office of TECT and on TECT's website various additional information about the Proposed TECT Restructure, including:

84.1 the current versions of the TECT Trust Deed and 2002 Charitable Trust Deed (**tabs 2 and 6** of the bundle);

84.2 the proposed TECT Consumer Trust Deed in clean and marked up versions (**tabs 13 and 14**);

84.3 a summary of the proposed changes to the TECT Consumer Trust (**tab 15**);

84.4 the proposed TECT Community Trust Deed (**tab 12**);

84.5 a memorandum from Chapman Tripp to the Consumers with information on the Proposed TECT Restructure and the application for directions under section 133 of the Trusts Act 2019 (**tab 22**); and

84.6 the letter from Trustpower confirming that it supported the Proposed TECT Restructure (**tab 16**).

85 A screenshot of the relevant page on the TECT's website showing the documents available is at **tab 23** of the bundle

*Consumer information sessions and submissions hearing*

86 The Trustees held three Consumer Information Sessions throughout Tauranga and the Western Bay of Plenty on 3, 4 and 7 March 2021. These sessions were open to the public. TECT ran through a presentation on the Proposed TECT Restructure at each of those sessions, which is at **tab 24**.

87 The hearing of Consumers' oral submissions was held on 25 March 2021. Only one day was required. The meeting was open to Consumers and to the general public, and all Trustees were present. Every Consumer who wished to make an oral submission was given the opportunity to do so.

**Consumer feedback**

- 88 The Trustees received a total of 791 written submissions from Consumers. Consumers made submissions in writing by post, email and online via TECT's website.
- 89 780 submissions were received by the closing date, and 11 further submissions were received late. Those late submissions were largely received through the post in the days after submissions closed. The Trustees accepted and considered those late submissions.
- 90 All submissions received were provided to the Trustees.
- 91 The Trustees made all written submissions on the Proposed TECT Restructure available to Consumers at TECT's offices.
- 92 Forty one Consumers indicated they wanted to make an oral submission to the Trustees at the hearing. As I have said, that hearing was held on 25 March 2021. Each submitter was given about 10 minutes to present their submissions. In total, 32 Consumers ended up presenting to the Trustees at that hearing.
- 93 Some Consumers provided an additional written submission at the hearing. Those were included and added to the respective Consumer's original submission.

**Trustees' decisions on the Proposed TECT Restructure**

- 94 At each trustee meeting that considered the Proposed TECT Restructure, all trustees were asked to declare any relevant interest. None was declared and as Chair I was satisfied that no trustee had a conflict of interest in the matter.
- 95 On 30 March 2021 the Trustees met and resolved to take further advice on the submissions received both in writing and at the 25 March 2021 hearing, including the 11 submissions that were received late.
- 96 On 15 April 2021, the Trustees held meetings of TECT and the 2002 Charitable Trust to consider the oral and written submissions.
- 97 A management report on the submissions was provided to the Trustees ahead of that 15 April meeting. That management report is at **tab 25** of the bundle.
- 98 The Trustees considered a wide range of alternative restructuring options during the 15 April 2021 meeting, including various options that had been proposed by Consumers through the consultation process. Those options included:



- 98.1 TECT seeking to prevent Trustpower undertaking the strategic review of its retail business, or preventing a sale occurring if that is the outcome of that review.
  - 98.2 TECT waiting until a sale of Trustpower's retail business actually occurs.
  - 98.3 Making the "Company" under the Trust Deed refer to any buyer of Trustpower's Retail Business so that customers of any such buyer, in the TECT Consumer District, would remain "Consumers".
  - 98.4 Winding up TECT and distributing its assets to the current Consumers.
  - 98.5 Winding up TECT and distributing its assets to a new community trust.
  - 98.6 Splitting TECT's capital along the same lines as the distribution mix adopted in recent years for TECT income, ie 80% to fund rebates and 20% to fund other community works.
  - 98.7 TECT paying a lump sum capital payment to existing beneficiaries, as well as ongoing rebates, or TECT paying some of the proposed rebate stream as a lump sum with a reduced rebate stream for 30 years.
  - 98.8 TECT continuing, with changes to pay rebates to eligible Consumers but only for a short period of time.
  - 98.9 TECT allowing Consumers to change electricity company after the restructuring so that they are not tied to the purchaser of the Trustpower retail business.
  - 98.10 TECT being restructured so as to provide rebates to every energy consumer in the TECT Consumer District, regardless of which retailer the consumer contracted with.
- 99 Ultimately, after discussing the various options, the submissions and the Trustees' views, the Trustees of TECT and the 2002 Charitable Trust agreed in principle to proceed with the Proposed TECT Restructure, as put to Consumers in the Consumer Consultative Procedure. The Trustees considered that the Proposed TECT Restructure was and is the most appropriate option for TECT, and was and is in the best interests of the beneficiaries. The Trustees resolved to have formal resolutions prepared to record those decisions.



- 100 On 22 April 2021, at respective meetings the Trustees of TECT and the 2002 Charitable Trust, the Trustees considered the formal resolutions that had been prepared and unanimously resolved to proceed with the Proposed TECT Restructure, subject to obtaining orders from the High Court approving those decisions.
- 101 The Trustees saw the Proposed TECT Restructure as consistent with the long-term and community focus of TECT. They considered that it properly addressed the structural concerns I identified above, and that it had received a broad measure of support in the community. Overall, they believed it to be within their powers to implement.
- 102 In resolving to proceed with the Proposed TECT Restructure, the Trustees of TECT and the 2002 Charitable Trust were satisfied that they are complying with their duties to act in the best interests of the beneficiaries and to act for proper purpose.
- 103 The respective Trustees' 22 April 2021 resolutions are at **tabs 26 and 27** of the bundle.

**Trustpower's further announcement**

- 104 On 28 April 2021, Trustpower announced that it had received a number of non-binding indicative proposals to acquire its retail business, following its announcement of a strategic review in January. The announcement stated that Trustpower's Board had reviewed the proposals and progressed into the due diligence stage of the process. That announcement is at **tab 28** of the bundle.

**Representation and service**

- 105 In the CIM, the Trustees indicated that the Trustees would apply to the Court under section 133 of the Trusts Act 2019 for confirmation that the Trustees' decisions to approve and implement the Proposed TECT Restructure are proper and lawful. Having resolved to proceed with the Proposed TECT Restructure, the Trustees have filed this application. As part of the application, Trustees considered it important that the Court hears from a lawyer who is independent of TECT.
- 106 The Trustees propose that service will be effected, and beneficiaries, and other Interested parties will be notified of the High Court application, by:

106.1 sending a notice (in essentially the same form as the draft notice attached at **tab 29** of the bundle to this affidavit) to anyone who was a Consumer (as defined in the TECT Trust Deed) as at 28 January 2021, or who has since become a Consumer. That notice will explain that the Trustees have filed an application to the Court for orders under section 133 of the Trusts Act 2019, and will provide information on how Consumers can access online, download or request a copy of

the documents filed in this proceeding. It will be accompanied by a summary of the restructure (attached in draft at **tab 30**). That notice and summary will be sent by way of:

- (a) mail to those whom TECT has a current postal address. TECT will use the database it uses for sending distribution payments to Consumers to mail the notice, as the primary line of communicating to Consumers about this proceeding; and
- (b) email to those whom TECT has a current email address. TECT has current email addresses for a subset of its Consumer database. Those Consumers who have provided a current email address will receive the notice by mail as set out above, as well as by email.

106.2 advertising a notice of the proceeding in the Bay of Plenty Times and the Weekend Sun. The advertisement will include a link for interested parties to access or request a copy of the documents. A draft advertisement is at **tab 31**; and

106.3 serving the Attorney-General (in respect of charitable beneficiaries);


106.4 serving the counsel appointed as independent counsel by the Court; and

106.5 publishing copies of all documents filed in the proceeding, and a copy of the above notice and advertisement to Consumers, on TECT's website.

107 In addition to the formal service, TECT will provide to Trustpower a full copy of the Court documents that it has filed in commencing this claim.

Sworn at Tauranga )  
 on 13 May 2021 )  
 before me: )

  
 A Solicitor of the High Court of New Zealand

  
 Alexander Lloyd Elder  
 Solicitor  
 Tauranga

# "BH-1"

## AFFIDAVIT OF BILL HOLLAND – EXHIBIT "BH-1"

### Index to bundle of documents

Alexander Lloyd Elder  
Solicitor  
Tauranga

This is the exhibit marked "BH-1" referred to in the affidavit of **William Beau Holland** sworn at Tauranga this 13<sup>th</sup> day of May 2021 before me:

  
A Solicitor of the High Court of New Zealand

Tab	Document
1	Original Tauranga Energy Consumer Trust Deed, dated 21 December 1993.
2	Current Tauranga Energy Consumer Trust Deed, dated 21 December 1993, as amended over time.
3	Establishment Plan.
4	TECT 1998 annual report.
5	TECT 1999 annual report.
6	2002 Charitable Trust Deed, dated 27 March 2002.
7	TECT 2020 Annual Report.
8	2002 Charitable Trust financial statements for the year to 31 March 2020.
9	TECT distribution plan for the year ending 31 March 2021.
10	Trustpower announcement, dated 28 January 2021.
11	TECT announcement, dated 28 January 2021.
12	Proposed TECT Community Trust Deed.
13	Proposed amended TECT Trust Deed, clean version.
14	Proposed amended TECT Trust Deed, marked up version.
15	Chapman Tripp summary of key proposed changes to the TECT Trust Deed.
16	Trustpower letter in support of the Proposed TECT Restructure, dated 18 February 2021.
17	Notice of Proposal, dated 18 February 2021.
18	Consumer Information Memorandum on the Future of TECT, dated 18 February 2021.
19	Emailed updates sent by TECT to Consumers.
20	Advertisements about the Proposed TECT Restructure.
21	TECT beneficiary feedback form.
22	Chapman Tripp memorandum to Consumers, dated 15 February 2021.



<b>Tab</b>	<b>Document</b>
23	Screenshot of materials on TECT website.
24	Presentation shown at Consumer information sessions.
25	Management report on Consumer submissions.
26	TECT Trustees' 22 April 2021 resolution approving the Proposed TECT Restructure.
27	2002 Charitable Trust Trustees' 22 April 2021 resolution approving the Proposed TECT Restructure.
28	Trustpower announcement, dated 28 April 2021.
29	Draft notice to Consumers with information about the Court application.
30	Summary of the final Proposed TECT Restructure to be sent to Consumers.
31	Draft advertisement with information about the Court application.

## TAB 1



DATED

21st day of DECEMBER

1993

---

**TRUSTPOWER LIMITED**

**AND**

**SHIRLEY MARGARET CROWLEY  
IAN FREDERICK FOOTE  
BARRY WALTER BRAME JENSEN  
NOEL HAYWARD JOHNSON  
NORMAN FREDERICK MAYO  
EDWARD MCGREGOR MURRAY  
NOEL FRANK POPE  
LYN ARTHUR WAHREN  
RUFUS GEORGE WALLINGFORD**

---

**TAURANGA POWER TRUST**

---

---

**RUDD WATTS & STONE  
SOLICITORS  
AUCKLAND,  
WELLINGTON AND NEW PLYMOUTH  
92296.WMP**

## TABLE OF CONTENTS

	Page No.
1. DEFINITIONS AND CONSTRUCTION .....	2
2. NAME OF THE TRUST .....	5
3. DECLARATION OF TRUST .....	5
4. PURPOSE OF THE TRUST .....	6
5. TRUSTS OF INCOME UNTIL DISTRIBUTION DATE .....	7
6. TRUSTS OF CAPITAL .....	10
7. APPOINTMENT, RETIREMENT AND PROCEEDINGS OF TRUSTEES .....	10
8. GENERAL POWERS .....	11
9. TRUSTEES' POWERS .....	11
10. DUTIES OF TRUSTEES .....	13
11. INFORMATION TO CONSUMERS .....	15
13. VARIATION TO TRUST DEED .....	16
14. WINDING UP OF TRUST .....	17
15. LIABILITY .....	17
16. INDEMNITY .....	18
17. NOTICES .....	18
SCHEDULE I .....	25
SCHEDULE II .....	40
SCHEDULE III .....	43

**TAURANGA POWER TRUST  
DEED OF TRUST**

DEED dated *21st December* 19 *93*.

**BETWEEN** **TRUSTPOWER LIMITED** a duly incorporated company with its registered office at Tauranga (hereinafter called 'the Company')

**AND** **SHIRLEY MARGARET CROWLEY**  
**IAN FREDERICK FOOTE**  
**BARRY WALTER BRAME JENSEN**  
**NOEL HAYWARD JOHNSON**  
**NORMAN FREDERICK MAYO**  
**EDWARD McGREGOR MURRAY**  
**NOEL FRANK POPE**  
**LYN ARTHUR WAHREN**  
**RUFUS GEORGE WALLINGFORD**  
(hereinafter together with their successors in office called 'the Trustees')

**WHEREAS**

- A. The Tauranga Electric Power Board (the 'Board') has formed the Company as a registered public company limited by shares in which the sole subscriber is the Board.
- B. Pursuant to the Act the Minister of Energy has approved the establishment plan prepared and submitted in respect of the Company which establishment plan provides for the allocation of shares in the Company to the Trustees.
- C. The Company wishes to establish the Tauranga Power Trust to enable the Trustees to acquire the shares in the Company to be vested in the Trustees in accordance with the establishment plan.

- D. The Trustees will have an ongoing obligation to carry out reviews of their continuing ownership of the Shares involving consultation in accordance with the terms of this Deed.
- E. The benefits which the Trustees derive through their ownership of the assets of the Trust Fund will be made available directly or indirectly as the Trustees in their discretion decide to Consumers.

## 1. DEFINITIONS AND CONSTRUCTION

### 1.1 In this deed, unless the context otherwise requires:

'Act' means the Energy Companies Act 1992;

'Balance Date' means 31 March or any other date adopted from time to time by the Company as the end of its Financial Year;

'Board' means the Tauranga Electric Power Board constituted by the Electric Power Boards Act 1925;

'Chairperson' means the Trustee elected as chairperson pursuant to rule 4 of schedule 1;

'Company' means Trustpower Limited and includes any successor company or any company arising out of any reconstruction, amalgamation or merger of the Company;

'Consumer' means a person who is named in the records of the Company as being liable to pay the Company any amount in respect of the connection of premises situate in the District to the Company's distribution network;

'Consumer Consultative Procedure' means the procedure for consultation set out in schedule III;

**'Deed'** means this deed and includes the schedules and any amendments;

**'Deputy Chairperson'** means the Trustee elected as deputy chairperson pursuant to rule 4 of schedule 1;

**'Directors'** means the directors from time to time of the Company;

**'District'** means the territory over which the Board was authorised to supply electricity immediately prior to the Vesting Date pursuant to the Tauranga Electric Power Board Supply Licence granted to the Board under section 20 of the Electricity Act 1968;

**'Dividends'** means, in relation to the Company, any distributions paid in cash by the Company to the Trustees as holders under this Deed of Shares;

**'Environment'** shall have the meaning ascribed to that term in the Resource Management Act 1991;

**'Financial Statements'** means the financial statements of the Trust prepared in accordance with clause 10.2;

**'Financial Year'** means any year or other accounting period ending on a Balance Date;

**'Local Authority'** means a territorial authority within the meaning of the local Government Act 1974;

**'persons'** includes any individual, corporation, partnership, joint venture, association, trust, organisation, government department or local authorities;

**'Retirement Date'** means the date the Secretary declares the names of the candidates elected under rules 3.4(e) or 3.4(k) of schedule I;



**'Secretary'** means the person appointed as secretary pursuant to rule 19 of schedule I;

**'Shares'** means shares in the capital of the Company held by the Trust as part of the Trust Fund;

**'Special Resolution'** means a resolution of the Trustees passed by a majority of not less than seventy-five per cent (75%) of the Trustees in New Zealand and its territories at the time the Special Resolution is passed;

**'Termination Date'** means the earlier of 1 January 2072 and the date upon which the Trustees resolve that the Trust be wound up in accordance with clause 14 provided however that if the perpetuity period restrictions cease to apply to this Trust or are amended to permit the Trust to continue beyond 1 January 2073, this definition shall be amended so that the Termination Date shall be the date beyond which the Trust may not continue;

**'the Trust'** means the trust established by this Deed;

**'the Trustees'** means the trustees for the time being of the Trust;

**'Trust Fund'** means all the funds of the Trust and includes all capital and income for the time being held by the Trustees of the Trust;

**'Trustee Act'** means the Trustee Act 1956;

**'Vesting Date'** means the date upon which the Governor-General by Order in Council under section 47 of the Act vests the undertaking of the Board in the Company and the Shares in the Trustees.

1.2 In this Deed, unless the context otherwise requires:

(a) references to one gender include each other gender;

- (b) references to the singular include the plural and vice versa;
- (c) the headings and the index shall not affect the construction of this Deed;
- (d) references to clauses are references to clauses of this Deed and references to schedules are references to schedules to this Deed;
- (e) references to a statute include references to regulations, orders or notices made under or pursuant to such statute. References to any statute, regulations, order or other statutory instrument or by-law shall be deemed to be references to the statute, regulation, order, instrument or by-law as from time to time amended and includes substituted provisions that substantially correspond to those referred to;
- (f) words, terms or expressions which are defined in the Act but are not defined in this Deed shall have the meaning attributed to them in the Act.

1.3 For the purposes of the Perpetuities Act 1964 the perpetuity period applicable to this Deed shall be the period from the date of execution hereof until the first anniversary of the Termination Date.

## **2. NAME OF THE TRUST**

The Trust shall be known as the Tauranga Power Trust or such other name as the Trustees may determine from time to time.

## **3. DECLARATION OF TRUST**

The Company hereby declares and directs that the Trustees shall stand possessed of the sum of \$100 settled by the Company contemporaneously with

the execution of this Deed and all other moneys or property of whatever kind hereafter paid, given, or transferred to, vested in, or purchased or acquired by (or agreed to be transferred to or purchased or acquired by) the Trustees to be held upon the trust hereby declared and any accumulations of income therefrom and all moneys, investments and property of whatever kind from time to time representing the same to be held upon the Trust and for the purposes and with the powers, authorities and discretions set out in this Deed.

#### **4. PURPOSE OF THE TRUST**

The purposes and objects for which the Trust is established are:

- 4.1 On Vesting Date, to receive Shares vested in the Trustees by order in council made in accordance with section 47 of the Act.
- 4.2 If the Trustees so elect to subscribe for, purchase or otherwise acquire additional shares in the capital of the Company.
- 4.3 To retain and hold the Shares until such time as the Shares are sold, transferred or disposed of.
- 4.4 In the event of any sale, transfer or other disposition of Shares to hold the proceeds of any such sale, transfer or other disposition upon the trust for capital in accordance with clause 6.1.
- 4.5 To receive Dividends and to distribute, pay, apply or appropriate the Dividends and other income of the Trust Fund which the Trustees do not resolve to accumulate to or for the benefit of the Consumers in the manner provided in clause 5 of this Deed.
- 4.6 Following the Termination Date to pay, apply and appropriate the capital of the Trust in the manner provided in clause 6.2.

## 5. TRUSTS OF INCOME UNTIL DISTRIBUTION DATE

The Trustees shall until the Termination Date stand possessed of the income arising from the Trust Fund upon the following trusts and with and subject to the following powers:

- 5.1 The Trustees shall from the net annual income derived by the Trust Fund first pay all the fees, costs and disbursements of and incidental to administering the Trust including remuneration and allowances payable to Trustees as hereinafter provided and costs incurred in pursuance of their duties and may in addition set aside reserves of income to provide for any payments or liabilities which the Trustees have power to pay pursuant to this clause 5.
- 5.2 The Trustees shall have power in their absolute discretion to accumulate so much of the income of the Trust Fund as they think fit by investing the same so that all such accumulations shall be added to and form part of the capital of the Trust Fund and be held by the Trustees upon the same trusts and with the powers herein declared in respect of such capital but provided that the Trustees may at any time or times resort to such accumulations and pay, apply or appropriate the whole or any part thereof as if the same were income of the Trust Fund arising in the Financial Year in which the same are resorted to.
- 5.3 The Trustees shall distribute the balance of the current net annual income by paying applying or appropriating the same in such manner and in such proportions as the Trustees in their absolute and unfettered discretion shall think proper for the benefit of the Consumers and where such distributions comprise Dividends the Trustees may have regard to any report of Directors given pursuant to clause 5.4 **AND IT IS DECLARED** that distributions of income for the benefit of Consumers may be made in any one or more of the following ways and no such distribution shall be called into question by any Consumer:

- (a) By payment in cash to any one or more of the Consumers to the exclusion of other Consumers in such manner and in such shares and proportions as the Trustees in their absolute and unfettered discretion shall think proper;
- (b) By the provision of goods or services or an entitlement to goods and services to any Consumer or Consumers and generally in such form and at such value as the Trustees shall determine including the giving of an entitlement by voucher or some other form of entitlement (which may be transferable or not transferable as the Trustees decide) to goods and services which the Trustees may have purchased or provided for out of the income of the Trust Fund;
- (c) By carrying out or causing to be carried out works which in the opinion of the Trustees will benefit Consumers such as:
  - (i) Improvements to the safety of Consumers by removing road and overhead hazards caused by above ground electricity supply support systems in the District;
  - (ii) Avoiding, remedying or mitigating any adverse effects of energy related activities on the Environment;
  - (iii) Promoting research into more efficient ways of producing and distributing electrical energy for the benefit of Consumers in the District including the awarding of research scholarships or prizes and the funding of research and development projects;
  - (iv) Subsidising the installation of the means of supply of energy to Consumers which would otherwise be uneconomic.

5.4 The Trustees may request the Directors to produce a report in respect of each Dividend received by the Trustees which report recommends an appropriate allocation of the Dividend amongst the classes of Consumer

based on the contribution made by each class of Consumer to the earning of that Dividend and in such report the Directors may classify Consumers in any manner they see fit.

- 5.5 Any of the Consumers to whom or in respect of which income is paid, applied or appropriated by the Trustees pursuant to clause 5.3, shall, subject to clause 5.8, as from the date of such payment, application or appropriation take an absolute and indefeasibly vested interest in such income.
- 5.6 The foregoing provisions as to vesting of income shall not operate to vest any part of the corpus of the Trust Fund in any of the Consumers.
- 5.7 Each Trustee who is also a Consumer shall notwithstanding the provisions of this Deed or any applicable rule of law or equity, be entitled to receive any benefits as a Consumer which may be distributed to Consumers in accordance with clause 5.3.
- 5.8 All payments made to Consumers or entitlements of Consumers to goods and services unclaimed for one year after having been sent (or attempted to be so sent) or notified to any Consumer may be invested or otherwise made use of by or being an entitlement to goods and services disposed of by the Trustees for the benefit of the Trust Fund until claimed and the Trustees shall be entitled to mingle the amounts of any unclaimed payments or money from entitlements with other moneys forming part of the Trust Fund and to credit any income arising in any Financial Year from the investment of such unclaimed payments to the Trust Fund. Any amounts unclaimed on the earlier of the Termination Date or one year after that amount was sent (or attempted to be so sent) or notified to any Consumer shall thereupon be deemed to form part of the Trust Fund.

## **6. TRUSTS OF CAPITAL**

- 6.1 The Shares or the proceeds of sale or other disposition of the Shares and investments representing the same (the corpus of the Trust Fund) shall be held by the Trustees upon trust to pay, apply or allocate the same, on or before the Termination Date for the benefit of the Consumers in such manner and in such shares as the Trustees in their absolute and unfettered discretion consider fair and equitable **PROVIDED THAT** the Trustees may at any time or times prior to the Termination Date pay, apply or allocate the corpus of the Trust Fund or any part of parts thereof as the Trustees think fit for the benefit of the Consumers in any of the ways set out in clause 5.3 of this Deed as if the provisions of clause 5.3 and clause 9.3 with any necessary changes were reproduced in this clause 6.1.
- 6.2 From and after the Termination Date the Trustees shall stand possessed of the corpus of the Trust Fund and the income thereof and any income previously derived by the Trustees that has not been paid, applied or appropriated in accordance with clause 6.1 of this Deed, upon trust to pay, apply or appropriate the same to or for or otherwise howsoever for the benefit of the Consumers in such manner and in such shares (including if permitted by law, by establishing a further trust for the benefit of Consumers to be on the same terms mutatis mutandis as this Trust) as the Trustees shall in their absolute and unfettered discretion consider fair and equitable provided however that if the Trustees have not so paid, applied or appropriated any or all of such Trust Fund and income on the day before the first anniversary of the Termination Date the amount so remaining shall be paid in equal shares to each Consumer as at the first anniversary of the Termination Date.

## **7. APPOINTMENT, RETIREMENT AND PROCEEDINGS OF TRUSTEES**

The rules set forth in schedule I hereto (with such amendments, deletions and additions thereto as may lawfully be made) shall upon the execution of this

Deed govern the appointment, retirement and proceedings of the Trustees and associated matters.

## **8. GENERAL POWERS**

8.1 The Trustees may exercise the powers, authorities and discretions conferred by this Deed in addition to and not by way of limitation of the powers, authorities and discretions conferred upon the Trustees generally by the Trustee Act (except where otherwise specified in this Deed). For the avoidance of doubt, the Trustees shall have no power, authority or discretion to participate in the management or operation of the Company and in exercising the powers conferred by this clause and clause 9 the Trustees shall be restricted to exercising their rights as a shareholder subject always to the provisions of this Deed.

8.2 In the exercise of any power, authority or discretion under this Deed the Trustees shall have no obligation to deal with persons other than those who qualify as Consumers as defined in this Deed and in particular shall not be required to recognise any trust or other arrangement affecting any Consumer nor shall the Trustees be liable in any respect for any inaccuracies in the records of the Company which affect the status of any person as being or not being a Consumer.

## **9. TRUSTEES' POWERS**

9.1 Subject to the express terms of this Deed (and without limiting the generality of the foregoing) the Trustees shall have in relation to the Trust Fund and the income arising from the Trust Fund all the same powers as a natural person acting as beneficial owner of the property from time to time comprising the Trust Fund and such powers shall not be restricted by any principle of construction or rule of law except to the extent that such is obligatory.



9.2 Without limiting the generality of the preceding paragraph and merely by way of example the Trustees shall have the powers set out in schedule II to this Deed which may be exercised either alone or jointly with any other person.

9.3 Notwithstanding clause 9.1, the Trustees shall not dispose (whether legally or beneficially) of any interest in the Shares or any other asset of the Trust Fund (and where more than one asset of the Trust Fund is disposed of in one or more transactions which substantially represent a single disposition of assets those assets shall be regarded as a single asset) unless:

(a) the disposal has been approved by a Special Resolution of the Trustees;

(b) where the disposition is of Shares:

(i) the Company has approved the proposed purchaser of the Shares; and

(ii) if the number of Shares proposed to be disposed of:

(A) is equal to or greater than 5 per cent of the total issued share capital of the Company or of the class (or classes) being disposed of (as determined in the manner provided by section 24 of the Securities Amendment Act 1988); or

(B) when aggregated with any previous dispositions of Shares which have not been the subject of a Consumer Consultative Procedure, would be equal to or greater than 5 per cent of the total issued share capital of the Company or of the class (or classes) being disposed of (as determined in the manner provided by section 24 of the Securities Amendment Act 1988);

the Trustees have first implemented a Consumer Consultative Procedure in respect of the proposed disposal;

- (c) where the disposition is of an asset which exceeds (or when aggregated with the value of assets previously disposed of which were not subject to a Consumer Consultative Procedure exceeds) in value five (5) per cent of the value of the Trust Fund, the Trustees have first implemented a Consumer Consultative Procedure in respect of the proposed disposal.

9.4 Notwithstanding the provisions of section 13C of the Trustee Act 1956 and the likelihood that the Trustees will from time to time include persons whose profession, employment or business is or includes acting as a trustee or investing money on behalf of others, the care diligence and skill to be exercised by the Trustees in exercising any power of investment shall not be that required of such persons by section 13C of the Trustee Act 1956 but, subject always to clause 9.5, shall at all times be the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others.

9.5 Subject to clause 15 but notwithstanding anything else in this Deed, no Trustee shall be liable for any breach of trust in respect of any duty to exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others or that a prudent person engaged in a profession, employment or business that is or includes acting as a trustee or investing money on behalf of others would exercise in managing the affairs of others merely (in either case) because the investments of the Trust Fund are not diversified.

## 10. DUTIES OF TRUSTEES

The Trustees shall:

10.1 Ensure that full and correct accounts of all the financial transactions of the Trust and its assets and liabilities and funds are kept.

- 10.2 After the end of the each Financial Year cause to be prepared financial statements including a balance sheet and income and expenditure account and notes to those documents giving a true and fair view of the financial affairs of the Trust for that Financial Year. The financial statements shall show separately the names or classes of persons or organisations to whom distributions of income have been made by the Trust in that Financial Year and the amounts distributed.
- 10.3 Appoint from time to time on such terms as they think fit as auditor of the Trust a person (not being the auditor of the Company) who is either:
- (a) a member of the New Zealand Society of Accountants;
  - (b) a member, fellow, or associate of an Association of Accountants constituted in some part of the Commonwealth outside New Zealand and for the time being approved for the purpose of the audit of company accounts under section 165(4) of the Companies Act 1955.
- 10.4 Ensure that the Financial Statements are audited.
- 10.5 Immediately upon completion of the audit of the Financial Statements insert advertisements in a principal newspaper or newspapers circulating in the District, notice that the Financial Statements are available for inspection by Consumers at the office of the Trustees.
- 10.6 Make the Financial Statements available to Consumers in accordance with clause 11.
- 10.7 Make a copy of this Deed available to Consumers in accordance with clause 11.

## **11. INFORMATION TO CONSUMERS**

- 11.1 For the purpose of complying with any requirement under this Deed to make any document or information available to Consumers, it shall be sufficient for the Trustees to make such document or information available for inspection at any office of the Trust or any office of the Company or at any other place in the District during normal business hours on any business day.
- 11.2 The Trustees shall give not less than 3 days' notice in a principal newspaper or newspapers circulating in the District of the place at which and the times when such documents or information may be inspected by Consumers.

## **12. REMUNERATION AND EXPENSES OF TRUSTEES**

- 12.1 (a) Any Trustee hereof who shall be employed in connection with the trusts hereof may be paid all such remuneration for their services as may be normal as if they had been employed in that behalf and had not been a Trustee hereof.
- (b) The Trustees (other than a Trustee remunerated pursuant to clause 12.1(a) to the extent that such remuneration covers services to which this clause 12.1(b) applies) shall be entitled in each Financial Year to such remuneration for their services as may be reasonable having regard to their duties and responsibilities as Trustees. Such remuneration is not to exceed the maximum meeting allowance payable from time to time in accordance with Part IVc of the Local Government Act 1974 to members of community boards with a community population exceeding 50,000 and otherwise to be subject to the same conditions that are imposed pursuant to Part IVc of the Local Government Act 1974 in respect of the payment of meeting allowances to such members of community boards.

12.2 The Trustees shall be entitled to be indemnified against, and reimbursed for, any expenses incurred by them in the exercise of their powers and duties under this Deed.

12.3 The payments of remuneration and expenses to the Trustees pursuant to rule 12.1(a) , 12.1(b) or rule 12.2 shall be paid out of the Trust Fund or any other fund available for that purpose.

### 13. VARIATION TO TRUST DEED

13.1 The Trustees shall have the power by Special Resolution (of which notice to propose that Special Resolution shall have been given in the notice convening the meeting) to alter or amend the terms of this Deed other than clause 13.2 and the provisions set out in clause 13.2 which shall only be capable of being altered or amended in the manner set out in clause 13.2.

13.2 The Trustees shall have power on a unanimous resolution of all the Trustees after the Trustees have implemented a Consumer Consultative Procedure in respect of such proposal to alter or amend:

(a) the definition of 'Consumers' or 'District'; and

(b) clauses 4, 5, 6, 9.3 or 14.

13.3 Notwithstanding clauses 13.1 and 13.2, no alteration or amendment may be made to this Deed that has the effect of limiting or restricting the obligations or powers of the Trustees under this Deed to:

(a) review proposals and available options for the ownership of the Shares;  
or

(b) sell, transfer or dispose of the Shares in accordance with clause 9.3.

#### **14. WINDING UP OF TRUST**

- 14.1 The Trustees may at any time after first having implemented a Consumer Consultative Procedure resolve by unanimous resolution to wind up the Trust.
- 14.2 If the Trust holds less than 5 per cent of the total share capital of the Company and does not hold any debt security issued by the Company the Trustees shall implement a Consumer Consultative Procedure to determine whether to wind up the Trust.
- 14.3 If a resolution to wind up the Trust has not been passed by 1 January 2072, the Trustees shall as soon as practical thereafter pass the resolutions requiring the Trust to be wound up. If the resolutions have not been passed by 1 July 2072 the provisions of clause 14.4 shall apply as if the resolutions had been passed.
- 14.4 On the winding up of the Trust, all surplus assets after the payment of all costs, debts and liabilities shall be paid, applied or appropriated to or for or otherwise howsoever for the benefit of Consumers in accordance with Clause 6.2.

#### **15. LIABILITY**

- 15.1 No Trustee acting or purporting to act in the execution of the trusts of this Deed shall be liable for any loss not attributable to that Trustee's own dishonesty or to the wilful commission or omission by that Trustee of an act where such commission or omission is known by the Trustee to be a breach of trust and in particular no Trustee shall be bound to take or be liable for failure to take any proceedings against a co-Trustee for any breach or alleged breach of trust committed by such co-Trustee.
- 15.2 Every Trustee shall be chargeable only for such moneys as shall actually have been received by that Trustee although that Trustee may have joined in any

receipt for money received by any other Trustee. No Trustee shall be answerable for the acts or omissions of any other Trustee nor for any loss which may arise by reason of any trust funds being lawfully deposited in the hands of any banker, solicitor or agent or for the sufficiency, insufficiency or deficiency of any security upon which any trust money or any part thereof may be invested or for any loss in the execution of any trust unless the same shall happen through that Trustee's neglect or default.

## 16. INDEMNITY

Any Trustee, officer or employee of the Trust shall be indemnified out of the assets of the Trust for and in respect of any loss or liability which such Trustee may sustain or incur by reason of the carrying out or omission of any function, duty or power under this Deed and also in respect of any expenses incurred by the Trustee in the management and administration of the Trust Fund unless such loss or liability is attributable to that Trustee's dishonesty or to the wilful commission of an act known by the Trustee to be a breach of trust or to the wilful omission by such Trustee of any act when that omission is known by such Trustee to be a breach of trust.

## 17. NOTICES

17.1 Any notices or documents to be given to the Trustees pursuant to this Deed shall be in writing signed by the person giving the notice and served at the office of the Trust.

17.2 Any notice or document given pursuant to clause 16.1 shall be deemed to be duly given or made:

(a) if delivered by hand, when so delivered;

(b) if sent by facsimile, when receipt is confirmed;

(c) if sent by post, on the third working day after posting.

**IN WITNESS WHEREOF** this Deed has been executed the day and year first hereinbefore written.

**Executed as a Deed**



THE COMMON SEAL of TRUSTPOWER LIMITED was affixed in the presence of:



[Handwritten Signature]

Signature of Authorised Person

[Handwritten Signature]

Signature of Authorised Person

Avon Leavett Carpenter  
Name of Authorised Person

Keith Neville Tempest  
Name of Authorised Person

Chairman  
Office Held

Secretary  
Office Held

SIGNED by SHIRLEY MARGARET CROWLEY in the presence of:

C. M. BOGUN  
Signature of Witness

[Handwritten Signature]  
Signature of SHIRLEY MARGARET CROWLEY

C. M. BOGUN  
Name of Witness

SECRETARY  
Occupation of Witness

TAURANGA  
Town of Residence

**SIGNED by IAN FREDERICK  
FOOTE in the presence of:**

*CM Bogun*  
Signature of Witness

*Ian F Foote*  
Signature of IAN FREDERICK FOOTE

C. M. BOGUN  
Name of Witness

SECRETARY  
Occupation of Witness

TAURANGA  
Town of Residence

**SIGNED by BARRY WALTER  
BRAME JENSEN in the presence  
of:**

*CM Bogun*  
Signature of Witness

*Bw B Jensen*  
Signature of BARRY WALTER BRAME JENSEN

C. M. BOGUN  
Name of Witness

SECRETARY  
Occupation of Witness

TAURANGA  
Town of Residence

**SIGNED by NOEL HAYWARD  
JOHNSON in the presence of:**

*Peter Williams*  
Signature of Witness

*Noel Hayward Johnson*  
Signature of NOEL HAYWARD JOHNSON

PETER WILLIAM SIMMONS  
Name of Witness

ACCOUNTANT  
Occupation of Witness

TAIRANGA  
Town of Residence

**SIGNED by NORMAN  
FREDERICK MAYO in the  
presence of:**

*Peter Williams*  
Signature of Witness

*N. F. Mayo*  
Signature of NORMAN-FREDERICK MAYO

PETER WILLIAM SIMMONS  
Name of Witness

ACCOUNTANT  
Occupation of Witness

TAIRANGA  
Town of Residence

**SIGNED** by **EDWARD  
McGREGOR MURRAY** in the  
presence of:

  
Signature of Witness

  
Signature of **EDWARD McGREGOR MURRAY**


PETER WILLIAM SIMMONDS.  
Name of Witness

ACCOUNTANT  
Occupation of Witness

TAURANGA  
Town of Residence

**SIGNED** by **NOEL FRANK  
POPE** in the presence of:

  
Signature of Witness

  
Signature of **NOEL FRANK POPE**

PETER WILLIAM SIMMONDS  
Name of Witness

ACCOUNTANT  
Occupation of Witness

TAURANGA  
Town of Residence

**SIGNED by LYN ARTHUR WAHREN in the presence of:**

*C.M. Bogun*  
Signature of Witness

*L.A. Wahren*  
Signature of LYN ARTHUR WAHREN

C.M. BOGUN  
Name of Witness

SECRETARY  
Occupation of Witness

TAURANGA  
Town of Residence

**SIGNED by RUFUS GEORGE WALLINGFORD in the presence of:**

*C.M. Bogun*  
Signature of Witness

*R.G. Wallingford*  
Signature of RUFUS GEORGE WALLINGFORD

C.M. BOGUN  
Name of Witness

SECRETARY  
Occupation of Witness

TAURANGA  
Town of Residence

**SCHEDULE I****RULES GOVERNING THE APPOINTMENT, RETIREMENT AND  
PROCEEDINGS OF THE TRUSTEES**

- 1. NUMBER OF TRUSTEES**
- 1.1 Until the first election of Trustees as provided herein the number of Trustees shall be not less than six (6) nor more than nine (9) and after that date the number of Trustees shall be six (6) **PROVIDED THAT** if at any time there are less than the minimum number of Trustees in office specified for that period the remaining Trustees shall be entitled to act until the number of Trustees is restored to the minimum number and no act or decision of the Trustees shall be called in to question on such account.
- 1.2 The Trustees who have executed this deed as first trustees shall hold office until the Retirement Date in March 1994 on which date six (6) of the Trustees (and any Trustee who may have been appointed to fill a casual vacancy of any of the first Trustees or a successor to any of the first Trustees) shall retire. The Trustees shall determine who among them shall retire (and, in the case of disagreement, this shall be determined by the drawing of lots).
- 1.3 Prior to the Retirement Date in March 1994 three (3) Trustees shall be elected to replace the six (6) Trustees retiring in accordance with rule 1.2 in the manner specified in rule 3.4, the declaration of the result of such election to take effect contemporaneously with the retirement required by rule 1.2. A retiring Trustee shall be eligible for nomination for election subject to the other provisions of this Deed.
- 1.4 On the Retirement Date in March 1996 those first Trustees who did not retire pursuant to rule 1.2 (and any Trustee who may have been appointed to fill a casual vacancy of any of the first Trustees or a successor to any of the first Trustees) shall retire.

- 1.5 Prior to the Retirement Date in March 1996 three Trustees shall be elected to replace the three (3) Trustees retiring in accordance with rule 1.4 in the manner specified in rule 3.4 such election to take effect contemporaneously with the retirement required by rule 1.4. A retiring Trustee shall be eligible for nomination for election subject to the other provisions of this Deed.
- 1.6 From and including the Retirement Date in March 1998 and two (2) yearly thereafter the three (3) Trustees who have been longest in office since their election (and if there are more than three (3) the three (3) to retire shall be determined by lot) shall retire and three (3) new Trustees who may, subject to the other provisions of this Deed, include Trustees who have retired shall be elected in accordance with rule 3.4. The appointment of any Trustee appointed to fill a casual vacancy shall be deemed for the purposes of this rule to have commenced on the date of election of the Trustee in respect of whom such casual vacancy relates.
- 1.7 Any vacancy in the number of Trustees may be filled by Special Resolution of the continuing Trustees but the new appointee shall hold office only for the residue of the term of office of the Trustee whose place is taken.

## 2. ELIGIBILITY

- 2.1 Subject to rule 2.2, the following persons shall not be eligible for appointment as a Trustee and may not hold office as a Trustee:
- (a) a bankrupt who has not obtained a final order of discharge or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled, or to any order under section 111 of the Insolvency Act 1967;
  - (b) a person who has been convicted of any offence punishable by a term of imprisonment of two or more years unless that person has obtained

a pardon or has served the sentence or otherwise suffered the sentence imposed upon that person;

- (c) a person who has been sentenced to imprisonment for any offence unless that person has obtained a pardon or has served the sentence;
- (d) a person to whom an order made under section 189 of the Companies Act 1955 applies;
- (e) a person who is mentally disordered within the meaning of the Mental Health Act 1969;
- (f) a person who is subject to a property order made under section 30 or section 31 of the Protection of Personal and Property Rights Act 1989;
- (g) a person who is not ordinarily resident in the District;
- (h) a person who is a director of the Company or is a councillor or employee of any Local Authority whose territory includes any part of the District.

2.2 A person shall not be disqualified from appointment and may continue to hold that office:

- (a) in any case to which rule 2.1(b) applies, until the expiration of the time for appealing against the conviction and, in the event of an appeal against conviction, until the appeal has been determined;
- (b) in any case to which rule 2.1(c) applies, until the expiration of the time for appealing against the sentence of imprisonment and, in the event of an appeal, until the appeal has been determined;
- (c) in any case to which rule 2.1(h) applies, until the declaration of the result of the first election of Trustees pursuant to rule 3.4(e) or 3.4(k);



- (d) in any case to which rule 2.1(h) applies, after the declaration of the result of the first election of Trustees pursuant to rule 3.4(e) or 3.4(k), if the Trustee resigns the office or employment disqualifying that Trustee from holding office as Trustee, which resignation is to have effect within two weeks of appointment as a Trustee.

### 3. TERM OF OFFICE

#### 3.1 A Trustee shall cease to hold office if:

- (a) the Trustee resigns by written notice to the Trustees;
- (b) the Trustee is ineligible for election or appointment as a Trustee pursuant to rule 2.1;
- (c) the Trustee dies while holding office as a Trustee;
- (d) the Trustees not re-elected pursuant to rule 3.4.

3.2 The provisions of rule 2.2 shall apply, *mutatis mutandis*, to rule 3.1. During any appeal period the Trustee shall be deemed to have taken leave of absence and shall not be capable of acting as a Trustee. If the conviction or sentence of imprisonment (as the case may be) is not upheld the Trustee shall be immediately reinstated. If the conviction or sentence (as the case may be) is upheld the disqualification as Trustee shall take immediate effect.

3.3 Upon every appointment, reappointment, retirement or cessation of office of any Trustee the Trustees shall cause an entry thereof to be recorded in the minute book of the Trust.

3.4 Other than the first Trustees as set out in rule 1.2, all Trustees shall be elected by Consumers in the following manner, or in such other manner as the Trustees may by Special Resolution determine from time to time:

- (a) Not later than three months before the proposed date of the election the Secretary shall insert a notice in a newspaper or newspapers circulating in the District giving:
- (i) advice of the proposed election;
  - (ii) the place or places at which nomination forms may be obtained;
  - (iii) where completed nominations may be lodged; and
  - (iv) notice that the nominator, candidate and seconder must be, at the time of making the nomination, Consumers;
  - (v) the day and time nominations close.
- (b) Every nomination of a candidate shall be in writing. Nomination forms shall be in such form as the Secretary decides, but shall include:
- (i) the full name and address of the candidate;
  - (ii) a statement by the candidate that the candidate is not, and to the best of the candidate's knowledge and belief will not be on the date of the election, disqualified from holding office as a Trustee by reason of any of the matters set out in rule 2.1. If the candidate would be disqualified from holding office because of rule 2.1(h), the candidate shall not be so disqualified if the statement is accompanied by a further statement that should that candidate be elected he or she shall immediately resign that office or employment which causes him or her to be disqualified under rule 2.1(h); and
  - (iii) the signature of the nominator and seconder and the candidate all of whom must be Consumers.

The Secretary shall be entitled to declare any nomination invalid where on reasonable grounds he has good cause to believe that the candidate is ineligible for election in terms of rule 2.1.

- (c) The nomination of a candidate shall be deemed to have never been made, and the candidate shall be ineligible for election, if the:
  - (i) nominator withdraws the nomination by notice received by the Secretary before closure of nominations;
  - (ii) candidate withdraws by notice received by the Secretary before a result is declared;
  - (iii) candidate dies before a result is declared;
  - (iv) candidate becomes disqualified by virtue of rule 2.1 before a result is declared.
- (d) Nominations shall close six weeks after the first notice calling for nominations was given pursuant to rule 3.4(a).
- (e) If, on the closure of nominations, the number of valid nominations which have been received are equal to or less than the number of vacancies for the office of Trustee the Secretary shall declare the candidates duly elected and no election shall be held. If less nominations are received than there are vacancies, the Trustees shall forthwith fill the vacancy or vacancies in accordance with rule 1.7 and a retiring Trustee who has not been nominated shall be eligible to fill a vacancy.
- (f) Should nominations be received for more than the number of vacancies the Secretary shall give not less than one month prior to the date on which votes are to be counted to the Consumers in such manner as the Secretary shall deem fit a postal ballot paper which shall contain the

names of all candidates validly nominated in alphabetical order of their surnames and appropriate provision for recording the Consumer's vote together with a pre-paid envelope in which the ballot paper is to be placed and returned to the Secretary and a written explanation of the method for recording the Consumer's vote the date on which and the manner in which the ballot paper is to be returned and the date on which votes are to be counted. Biographical and other details of the candidates may if the Trustees approve be included in the information given to Consumers. The date on which ballot papers are to be returned to the Secretary shall not be less than two (2) working days before the date on which the votes are to be counted.

- (g) The following provisions shall apply with respect to votes:
  - (i) each Consumer shall be distributed one voting paper;
  - (ii) in respect of joint Consumers the person whose name appears on the records of the Company first shall exercise the vote for that joint holding to the exclusion of the other joint holders;
  - (iii) Consumers may not vote for the appointment of more Trustees than there are vacancies;
  - (iv) Ballot papers received by the Secretary after the date stated in the notice to Consumers as the date on which ballot papers are to be returned shall not be counted.
- (h) The Secretary shall on the date appointed for voting count the number of valid votes cast for each candidate and ascertain the candidates elected.
- (i) A vote is invalid and shall not be counted if:

- (i) the Consumer votes for more candidates than there are Trustees to be elected;
  - (ii) in the opinion of the Secretary, the voting paper does not clearly indicate the candidate or candidates for whom the Consumer intended to vote.
- (j) Where, because two (2) or more candidates have received the same number of valid votes, the Secretary cannot determine which of them has been elected, the Secretary shall decide which of them is elected by lot drawn by those candidates in the presence of the Secretary and such other person or persons (if any) as the Secretary may decide.
- (k) Forthwith after ascertaining which candidates have been elected, the Secretary shall declare the names of the candidates so elected, and shall publish those names in one or more principal newspapers circulating in the District.
- (l) After declaring the result of the election the Secretary shall decide when to destroy the voting papers.
- (m) The Secretary and every person assisting the Secretary shall faithfully and impartially perform their duties and shall not, directly or indirectly:
- (i) before the declaration of the result of the election make known the state of the vote, or give or pretend to give any information by which the state of the vote might be known;
  - (ii) make known for which candidate or candidates any person has voted;
  - (iii) give any person any information likely to defeat the secrecy of the election.

- (n) Notwithstanding any other provision in the Deed or these rules, the retiring Trustees shall remain in office until the Secretary declares the result of the election pursuant to rule 3.4(e) or rule 3.4(k). Forthwith upon such declaration the candidates declared elected shall assume office in place of the retiring Trustees.

#### **4. CHAIRPERSON AND DEPUTY CHAIRPERSON**

The Trustees shall elect a Chairperson and Deputy Chairperson who shall also be Trustees at their annual general meeting and at any other time when either position becomes vacant.

#### **5. QUORUM**

A quorum at meetings of the Trustees shall comprise four (4) Trustees.

#### **6. VALIDITY OF PROCEEDINGS**

- 6.1 All acts done by any meeting of Trustees or of a committee of Trustees or by any person acting as a Trustee shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Trustee or person acting as aforesaid or that they or any of them were for any reason disqualified, be as valid as if such person had been duly appointed and was qualified to be a Trustee.

#### **7. RESCISSION OR VARIATION OF RESOLUTIONS**

Any resolution of the Trustees may be rescinded or varied from time to time by the Trustees at any subsequent meeting by the same majority as was necessary to pass the resolution being rescinded or varied.

## 8. MEETINGS OF TRUSTEES

- 8.1 Within four (4) months of the end of each Financial Year the Trustees shall hold an annual general meeting.
- 8.2 The Secretary shall give no less than thirty (30) days notice of the annual general meeting to the Trustees such notice to specify the date, time and place of the annual general meeting.
- 8.3 The business is to be transacted at the annual general meeting shall be the receipt of the annual report, accounts, appointment of the auditor and the setting of the remuneration (if any) of Trustees. Any other business shall be deemed special business and shall be dealt with in accordance with rule 8.4.
- 8.4 Notice in writing of any special business shall be given to the Secretary no less than twenty one (21) days prior to the annual general meeting. The Secretary shall circulate an agenda, including all special business, to the Trustees no later than fourteen (14) days prior to the annual general meeting and shall also give to Consumers not less than fourteen (14) days prior written notice of the time, place, date and agenda of the annual general meeting by an advertisement placed in a newspaper or newspapers circulating in all the areas of the District.
- 8.5 Consumers shall be entitled to attend and speak at the annual general meeting but shall not be entitled to vote at such meetings.
- 8.6 The Trustees shall otherwise meet at such times and places as they may agree to dispatch the business of the Trust. The Trustees shall be entitled to develop standing orders for the conduct of such meetings.
- 8.7 Any three (3) or more Trustees may at any time summon a meeting of Trustees.

## **9. NOTICE OF MEETINGS**

Notice in writing of every meeting shall be delivered or sent by post or facsimile to each Trustee by the Secretary or other person acting under the direction of the Trustees. In the case of a meeting summoned pursuant to rule 8.7, the Trustees, persons summoning it or the secretary or other person acting under the direction of the Trustees shall give at least seven (7) working days notice of that meeting. No notice shall be necessary for adjourned meetings except to Trustees not present when the meeting was adjourned.

## **10. ADJOURNMENT**

If a quorum is not present within thirty minutes after the time appointed for any meeting the Trustee or Trustees present may adjourn the meeting. Any meeting may be adjourned by the Chairperson upon the adoption of a resolution for its adjournment.

## **11. CONTENT OF NOTICE**

Every notice of meeting shall state the place, day, and hour of the meeting and every notice of a meeting summoned pursuant to rule 8.7 shall state the matters to be discussed at that meeting. Notice of any meeting may be abridged or waived if all the Trustees who are for the time being in New Zealand consent in writing to such abridgement or waiver.

## **12. COMMITTEES**

The Trustees may from time to time appoint any one or more Trustees to be a committee for making any inquiry, for considering supervising or transacting any business of the Trust, for the investment and management of the Trust Funds or any part thereof, or for the performance of any duty or function



which in the opinion of the Trustees will further the purposes and objects of the Trust. Subject to these rules and to any directions from time to time given by the Trustees every such committee may regulate its own procedure but so that a quorum at any meeting of the committee will be a majority of its members for the time being.

### **13. VOTING**

- 13.1 Except as otherwise provided in this Deed and subject to the quorum requirements as to meetings, the Trustees shall exercise their powers and discretions by a simple majority vote of the Trustees present.
- 13.2 Neither the Chairperson nor the Deputy Chairperson shall have a casting vote in addition to his or her deliberative vote.

### **14. INTERESTED TRUSTEES**

- 14.1 A Trustee who in any way, whether directly or indirectly, has a material interest in any contract or proposed contract or arrangement or dealing with the Trust (other than as a Consumer or as a member, officer, or employee of any firm, company or organisation that is a Consumer) shall disclose the nature of that interest at a meeting of the Trustees and such disclosure shall be recorded in the minutes of the meeting. A trustee who holds beneficially (directly or indirectly) less than 10,000 shares in the Company shall not be required to disclose that shareholding.
- 14.2 A Trustee required to disclose an interest by rule 14.1 may be counted in a quorum present at a meeting but shall not vote in respect of the matter in which the Trustee is interested (and if the Trustee does so vote the vote shall not be counted) provided that the Trustee may be expressly permitted to vote by a unanimous vote of the other Trustees present given after the disclosure of the interest.

- 14.3 If any question shall arise at any meeting as to the materiality of a Trustee's interest or as to the entitlement of any Trustee to vote and such question is not resolved by the Trustee voluntarily agreeing to abstain from voting, such question shall be referred to the Chairperson of the meeting and the Chairperson's ruling in relation to any such Trustee shall be final and conclusive except in a case where the nature or extent of the interest of the Trustee concerned has not been fairly disclosed.

## **15. MINUTES**

- 15.1 A minute book shall be provided and kept by the Trustees and all proceedings of the Trustees shall be entered in the minute book.
- 15.2 Minutes signed by the chairperson of the meeting at which the proceedings were transacted or by the chairperson of the next succeeding meeting shall be evidence of the proceedings.
- 15.3 Where minutes of the proceedings at any meeting of Trustees have been made in accordance with the provisions of these rules then, until the contrary is proved, the meeting shall be deemed duly held and convened and all proceedings at that meeting to have been duly conducted.

## **16. RESOLUTIONS IN WRITING**

Notwithstanding any other provisions in the Deed or these rules, a resolution in writing signed by all the Trustees or (as the case may be) by all the members of a committee, shall be as effective for all purposes as a resolution passed at a meeting of the Trustees or of such committee (as the case may be) duly convened, held and constituted. Such resolution may consist of several documents in the same form, each signed by one or more of the Trustees or members of the committee, (as the case may be).

## 17. MEETINGS BY TELEPHONE

17.1 Notwithstanding any other provision in the Deed or these rules, the contemporaneous linking together of a number of the Trustees or members of a committee ('the participants') being not less than a quorum, together with the Secretary or a person acting as a secretary, shall be deemed to constitute a meeting and all the provisions in these rules as to meetings shall apply to such meetings by telephone so long as the following conditions are met:

- (a) All the participants for the time being entitled to receive notice of a meeting shall be entitled to notice of a meeting by telephone and to be linked by telephone for the purposes of such meeting. Notice of such meeting may be given by telephone;
- (b) Each of the participants taking part in the meeting by telephone, and the Secretary or person acting as a secretary, must be able to hear each of the others taking part at the commencement of the meeting;
- (c) At the commencement of the meeting each participant must acknowledge his or her presence for the purpose of such meeting to all the others taking part;
- (d) A participant may not leave the meeting by disconnecting his or her telephone without having previously obtained the express consent of the chairperson of the meeting and shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone unless having obtained the express consent of the chairperson to leave the meeting as aforesaid.

17.2 Minutes of the proceedings at such meeting by telephone shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the chairperson of the meeting or by the Secretary or person acting as a secretary.

**18. EXECUTION OF DOCUMENTS**

All documents required to be executed by the Trustees shall be deemed to be validly executed and binding on the Trust if these documents have been entered into and executed by the authority of the Trustees previously given and signed by at least two (2) Trustees or any other person approved by the Trustees for the purpose.

**19. SECRETARY AND TREASURER**

- 19.1 The Trustees shall appoint from time to time a Secretary and a Treasurer who may also be Trustees.
- 19.2 It shall be the duty of the Secretary to keep usual records of the business of the Trust and to notify Trustees of intended meetings and the business to be transacted at such meetings.
- 19.3 It shall be the duty of the Treasurer to keep usual and proper books of account and other financial records of the business to report to the Trustees from time to time on the finances of the Trust Fund to present annual statements of account for audit and for consideration by the Trustees and to prepare and file from time to time with the Inland Revenue Department all necessary tax accounts.

**SCHEDULE II**  
**TRUSTEES' SPECIFIC POWERS**

Subject to any express terms in this Deed limiting or restricting such powers, the Trustees shall have the power to:

- (a) Invest the Trust Fund or any portion thereof, notwithstanding that it may be subject to any liability, in any property whether in New Zealand or overseas.
- (b) Sell all or any part of the property comprising the Trust Fund at such price on such terms and subject to such conditions as they in their absolute discretion think fit with power to allow the whole or any part of the purchase money to remain owing as a debt to the Trust.
- (c) Retain property forming part of the Trust Fund.
- (d) Borrow moneys on such terms and subject to such conditions as the Trustees think fit.
- (e) Lease or to take on lease or licence any property on such terms and subject to such conditions as they think fit and to accept or effect such surrenders of leases and licences as they think fit.
- (f) Lend moneys on such terms and subject to such conditions as the Trustees think fit
- (g) Maintain manage repair improve and develop any property which or an interest in which for the time being forms part of the Trust Fund in such manner as the Trustees shall think fit.
- (h) Employ and pay any person (including any Trustee) to do any act of whatever nature relating to the Trust including the receipt and payment of money.

- (i) Open an account or accounts at any time or times in any name or names and either on their own behalf or jointly with another at any bank and to overdraw any such account with or without giving security and in addition to the powers conferred by section 81 of the Trustee Act 1956 to make arrangements with any Bank for any one or more of the following, namely, the Trustees and/or any delegate or delegates named in writing by all the Trustees to operate upon any account at that Bank. All sums of money received on account of the Trust shall be forthwith paid into the credit of such account or accounts unless otherwise expressly ordered by the Trustees. All negotiable instruments and all receipts for money paid to the Trust shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Trustees from time to time determine.
- (j) Insure against loss or damage by any cause whatsoever any insurable property to any amount not exceeding the full insurable value thereof or the full replacement value thereof as the Trustees may in their absolute discretion from time to time think fit.
- (k) Enter into contracts of any nature whatsoever for the purpose of protecting maintaining or enhancing the value of all or any assets acquired or held by the Trustees or which the Trustees have the right to acquire or hold.
- (l) Delegate any of the powers and duties to any committee or committees consisting of such of the Trustees (or such other persons) as they may appoint for such purpose.
- (m) Subject to the provisions of this Deed, to exercise as the Trustees in their absolute discretion think fit all the voting powers attaching to any Shares forming part of the Trust Fund including to consider any recommendations made by the directors of the Company on any proposal relating to any reconstruction or amalgamation or merger of the Company or any Subsidiary or any modification of the rights of shareholders or any increase or reduction of capital or other dealing with the Shares and after giving due consideration to the recommendations of the directors to make a decision in respect of any

such proposal as the Trustees may consider in their absolute discretion will be for the benefit of or in the interests of the Trust Fund.

- (n) To appoint Directors in the manner provided by the Articles of Association of the Company provided however that the Trustees be satisfied that any person to be so appointed will be a person who has business acumen, sufficient time to devote to the affairs of the Company and the expertise to enable the Company to operate as a successful business.
- (o) To determine whether any money for the purposes of this Deed is to be considered as income or capital and what expenses ought to be paid out of income and capital respectively and also to apportion payments and every such determination or apportionment shall be final and binding on all persons beneficially interested in the Trust Fund and income thereof.
- (p) To determine all questions and matters of doubt which may arise in the course of the trusteeship of this Trust.
- (q) Do such other acts and things as the Trustees may in their absolute discretion consider incidental or conducive to the attainment of the general purposes of the Trust.

**SCHEDULE III****CONSUMER CONSULTATIVE PROCEDURE**

In respect of any provision of this Deed which requires the Trustees to implement a Consumer Consultative Procedure, the Trustees shall:

- (a) Place notice of the proposal before a meeting of the Trustees;
- (b) Give notice of the proposal to Consumers in accordance with clause 11 of the Deed;
- (c) In every notice given under paragraph (b) of this schedule, specify a period within which Consumers interested in the proposal may make submissions on the proposal to the Trustees;
- (d) Ensure that any Consumer who makes written submissions on the proposal within the period specified in the notice given under paragraph (b) of this schedule is given a reasonable opportunity to be heard by the Trustees;
- (e) Ensure that every meeting at which submissions are heard are open to Consumers; and
- (f) Make all written submissions on the proposal available to Consumers.

The period specified pursuant to paragraph (c) above shall be not less than one month and no more than three months.





## TAB 2





**TECT**

**At the heart of  
our community**

# Trust Deed

Conformed copy of Trust Deed - including all amendments as at  
19 October 2016



**TABLE OF CONTENTS**

	<b>Page No.</b>
1. DEFINITIONS AND CONSTRUCTION .....	3
2. NAME OF THE TRUST.....	7
3. DECLARATION OF TRUST .....	7
4. PURPOSE OF THE TRUST .....	7
5. TRUSTS OF INCOME UNTIL DISTRIBUTION DATE.....	7
6. TRUSTS OF CAPITAL .....	9
7. APPOINTMENT, RETIREMENT AND PROCEEDINGS OF TRUSTEES .....	10
8. GENERAL POWERS.....	10
9. TRUSTEES' POWERS .....	10
10. DUTIES OF TRUSTEES .....	12
11. INFORMATION TO CONSUMERS.....	17
12. REMUNERATION AND EXPENSES OF TRUSTEES.....	17
13. VARIATION TO TRUST DEED .....	18
14. WINDING UP OF TRUST .....	18
15. LIABILITY.....	19
16. INDEMNITY.....	19
17. NOTICES.....	19

SCHEDULE I

SCHEDULE II

SCHEDULE III

**TAURANGA ENERGY CONSUMER TRUST  
DEED OF TRUST**

**DEED** dated 21st day of December 1993

**BETWEEN** **TRUSTPOWER LIMITED** a duly incorporated company with its registered office at Tauranga (hereinafter called "the Company")

**AND** **SHIRLEY MARGARET CROWLEY**  
**IAN FREDERICK FOOTE**  
**BARRY WALTER BRAME JENSEN**  
**NOEL HAYWARD JOHNSON**  
**NORMAN FREDERICK MAYO**  
**EDWARD MCGREGOR MURRAY**  
**NOEL FRANK POPE**  
**LYN ARTHUR WAHREN**  
**RUFUS GEORGE WALLINGFORD**  
(hereinafter together with their successors in office called "the Trustees")

**WHEREAS**

- A. The Tauranga Electric Power Board (the "Board") has formed the Company as a registered public company limited by shares in which the sole subscriber is the Board.
- B. Pursuant to the Act the Minister of Energy has approved the establishment plan prepared and submitted in respect of the Company which establishment plan provides for the allocation of shares in the Company to the Trustees.
- C. The Company wishes to establish the Tauranga Energy Consumer Trust to enable the Trustees to acquire the shares in the Company to be vested in the Trustees in accordance with the establishment plan.
- D. The Trustees will have an ongoing obligation to carry out reviews of their continuing ownership of the Securities involving consultation in accordance with the terms of this Deed.
- E. The benefits which the Trustees derive through their ownership of the assets of the Trust Fund will be made available directly or indirectly as the Trustees in their discretion decide to Consumers.

**1. DEFINITIONS AND CONSTRUCTION**

1.1 In this deed, unless the context otherwise requires:

"Act" means the Energy Companies Act 1992;

"Annual General Meeting" means a meeting of Trustees specified as the annual general meeting in the notice calling the meeting;

**"Balance Date"** means 31 March or any other date adopted from time to time by the Company as the end of its Financial Year;

**"Board"** means the Tauranga Electric Power Board constituted by the Electric Power Boards Act 1925;

**"Chairperson"** means the Trustee elected as chairperson pursuant to rule 4 of schedule 1;

**"Code of Conduct"** means a code of conduct to regulate the behaviour and conduct of participants in relation to a Trustee election and which is adopted, amended and issued from time to time by Trustees to the Independent Returning Officer;

**"Code of Practice"** means the operating guidelines to promote best practice in energy trust administration adopted or to be adopted by the Trustees in respect of the Trust (as amended or replaced from time to time);

**"Company"** means Scarlett Limited (formerly called Trustpower Limited) (company number 604040) and includes any successor company or any company arising out of any reconstruction, amalgamation or merger of the Company, including (without limitation) Trustpower Limited (company number 565426) but excluding Tilt Renewables Limited (company number 1212113) and any subsidiary companies of Tilt Renewables Limited;

**"Confidential Information"** means information which is by express classification or by its nature reasonably intended to be confidential to the Trust and which has not been released into the public domain by reason of:

- (i) The proper discharge in good faith by a Trustee of duties and obligations created by the Trust;
- (ii) The proper discharge in good faith by a Trustee with the express authority or express consent of the Trust of duties and obligations created by the Trust;
- (iii) The order or direction of any lawful or regulatory authority; or
- (iv) A request for disclosure pursuant to the Guidelines.

**"Consumer"** means:

- (i) a person who is named in the records of the Company as being liable to pay the Company any amount for electrical energy supplied or to be supplied to premises situate in the District;
- (ii) the TECT Charitable Trust as constituted pursuant to a deed of trust dated 27 March 2002; or
- (iii) any other entity wholly owned and/or controlled by TECT and whose beneficiaries and objectives are substantially the same as TECT's;

**"Consumer Consultative Procedure"** means the procedure for consultation set out in schedule III;

**"Deed"** means this deed and includes the schedules and any amendments;

**"Deputy Chairperson"** means the Trustee elected as deputy chairperson pursuant to rule 4 of schedule 1;

**"Directors"** means the directors from time to time of the Company;

**"District"** means:

- (i) the territory over which the Board was authorised to supply electricity immediately prior to the Vesting Date pursuant to the Tauranga Electric Power Board Supply Licence granted to the Board under section 20 of the Electricity Act 1968; and
- (ii) the territory over which Tauranga Electricity Limited was authorised to supply electricity immediately prior to its merger with the Company in 1997 and includes, for the avoidance of doubt, that area comprising the Tauranga City peninsula north of the centreline of 17<sup>th</sup> Avenue, Tauranga.

**"Dividends"** means, in relation to the Company, any distributions paid in cash by the Company to the Trustees as holders under this Deed of Shares or Other Securities;

**"Environment"** shall have the meaning ascribed to that term in the Resource Management Act 1991;

**"Financial Statements"** means the financial statements of the Trust prepared in accordance with clause 10.2(a);

**"Financial Year"** means any year or other accounting period ending on a Balance Date;

**"Guidelines"** means those "Guidelines for Access to Trust Information by Consumers" adopted, amended or superceded from time to time by a resolution of Trustees relating to the rights of Consumers to, and procedures relating to the disclosure of, Trust information as referred to in the Code of Practice;

**"Independent Returning Officer"** means that person appointed to the office of Independent Returning Officer pursuant to clause 10.5 for the purposes of conducting and supervising any Trustee election held pursuant to clause 3.4 of Schedule 1;

**"Local Authority"** means a local authority within the meaning of the local Government Act 1974;

**"Other Securities"** means securities (other than the Shares), instruments (including convertible notes and voting debentures) or options convertible to shares or other securities in the Company;

**"persons"** includes any individual, corporation, partnership, joint venture, association, trust, organisation, government department or local authorities;

**"Retirement Date"** means the date the Secretary declares the names of the candidates elected under rules 3.4(e) or 3.4(k) of schedule I;

**"Secretary"** means the person appointed as secretary pursuant to rule 19 of schedule I;



**"Securities"** means Shares or other securities, instruments (including convertible notes and voting debentures) or options convertible to Shares or other securities in the Company;

**"Shares"** means shares in the capital of the Company held by the Trust as part of the Trust Fund;

**"Special Resolution"** means a resolution of the Trustees passed by a majority of not less than seventy five per cent (75%) of the total number of Trustees in office at the time the Special Resolution is passed;

**"Termination Date"** means the earlier of 1 January 2072 and the date upon which the Trustees resolve that the Trust be wound up in accordance with clause 14 provided however that if the perpetuity period restrictions cease to apply to this Trust or are amended to permit the Trust to continue beyond 1 January 2073, this definition shall be amended so that the Termination Date shall be the date beyond which the Trust may not continue;

**"the Trust"** means the trust established by this Deed;

**"the Trustees"** means the trustees for the time being of the Trust;

**"Trust Fund"** means all the funds of the Trust and includes all capital and income for the time being held by the Trustees of the Trust;

**"Trustee Act"** means the Trustee Act 1956;

**"Vesting Date"** means the date upon which the Governor-General by Order in Council under section 47 of the Act vests the undertaking of the Board in the Company and the Shares in the Trustees.

1.2 In this Deed, unless the context otherwise requires:

- (a) references to one gender include each other gender;
- (b) references to the singular include the plural and vice versa;
- (c) the headings and the index shall not affect the construction of this Deed;
- (d) references to clauses are references to clauses of this Deed and references to schedules are references to schedules to this Deed;
- (e) references to a statute include references to regulations, orders or notices made under or pursuant to such statute. References to any statute, regulations, order or other statutory instrument or by-law shall be deemed to be references to the statute, regulation, order, instrument or by-law as from time to time amended and includes substituted provisions that substantially correspond to those referred to;
- (f) words, terms or expressions which are defined in the Act but are not defined in this Deed shall have the meaning attributed to them in the Act.

- 1.3 For the purposes of the Perpetuities Act 1964 the perpetuity period applicable to this Deed shall be the period from the date of execution hereof until the first anniversary of the Termination Date.

2. **NAME OF THE TRUST**

The Trust shall be known as the Tauranga Energy Consumer Trust or such other name as the Trustees may determine from time to time.

3. **DECLARATION OF TRUST**

The Company hereby declares and directs that the Trustees shall stand possessed of the sum of \$100 settled by the Company contemporaneously with the execution of this Deed and all other moneys or property of whatever kind hereafter paid, given, or transferred to, vested in, or purchased or acquired by (or agreed to be transferred to or purchased or acquired by) the Trustees to be held upon the trust hereby declared and any accumulations of income therefrom and all moneys, investments and property of whatever kind from time to time representing the same to be held upon the Trust and for the purposes and with the powers, authorities and discretions set out in this Deed.

4. **PURPOSE OF THE TRUST**

The purposes and objects for which the Trust is established are:

- 4.1 On Vesting Date, to receive Shares vested in the Trustees by order in council made in accordance with section 47 of the Act.
- 4.2 If the Trustees so elect to subscribe for, purchase or otherwise acquire Other Securities in the capital of the Company.
- 4.3 To retain and hold the Shares and Other Securities until such time as the Shares or Other Securities, as the case may be, are sold, transferred or disposed of.
- 4.4 In the event of any sale, transfer or other disposition of Shares or Other Securities to hold the proceeds of any such sale, transfer or other disposition upon the trust for capital in accordance with clause 6.1.
- 4.5 To receive Dividends and to distribute, pay, apply or appropriate the Dividends and other income of the Trust Fund which the Trustees do not resolve to accumulate to or for the benefit of the Consumers in the manner provided in clause 5 of this Deed.
- 4.6 Following the Termination Date to pay, apply and appropriate the capital of the Trust in the manner provided in clause 6.2.

5. **TRUSTS OF INCOME UNTIL DISTRIBUTION DATE**

The Trustees shall until the Termination Date stand possessed of the income arising from the Trust Fund upon the following trusts and with and subject to the following powers:

- 5.1 The Trustees shall from the net annual income derived by the Trust Fund first pay all the fees, costs and disbursements of and incidental to administering the Trust including remuneration and allowances payable to Trustees as hereinafter provided and costs incurred in pursuance of their duties and may in addition set aside reserves of income to provide for any payments or liabilities which the Trustees have power to pay pursuant to this clause 5.
- 5.2 The Trustees shall have power in their absolute discretion to accumulate so much of the income of the Trust Fund as they think fit by investing the same so that all such accumulations shall be added to and form part of the capital of the Trust Fund and be held by the Trustees upon the same trusts and with the powers herein declared in respect of such capital but provided that the Trustees may at any time or times resort to such accumulations and pay, apply or appropriate the whole or any part thereof as if the same were income of the Trust Fund arising in the Financial Year in which the same are resorted to.
- 5.3 The Trustees shall distribute the balance of the current net annual income by paying applying or appropriating the same in such manner and in such proportions as the Trustees in their absolute and unfettered discretion shall think proper for the benefit of the Consumers and where such distributions comprise Dividends the Trustees may have regard to any report of Directors given pursuant to clause 5.4 **AND IT IS DECLARED** that distributions of income for the benefit of Consumers may be made in any one or more of the following ways and no such distribution shall be called into question by any Consumer:
- (a) By payment in cash to any one or more of the Consumers to the exclusion of other Consumers in such manner and in such shares and proportions as the Trustees in their absolute and unfettered discretion shall think proper;
  - (b) By the provision of goods or services or an entitlement to goods and services to any Consumer or Consumers and generally in such form and at such value as the Trustees shall determine including the giving of an entitlement by voucher or some other form of entitlement (which may be transferable or not transferable as the Trustees decide) to goods and services which the Trustees may have purchased or provided for out of the income of the Trust Fund;
  - (c) By carrying out or causing to be carried out works which in the opinion of the Trustees will benefit Consumers such as:
    - (i) Improvements to the safety of Consumers by removing road and overhead hazards caused by above ground electricity supply support systems in the District;
    - (ii) Avoiding, remedying or mitigating any adverse effects of energy related activities on the Environment;
    - (iii) Promoting research into more efficient ways of producing and distributing electrical energy for the benefit of Consumers in the District including the awarding of research scholarships or prizes and the funding of research and development projects;

- (iv) Subsidising the installation of the means of supply of energy to Consumers which would otherwise be uneconomic;
  - (d) By carrying out or causing to be carried out or funding in whole or in part (whether by way of Consumer distribution, loan, investment, the underwriting of project liabilities, the giving of financial support or otherwise) the carrying out of projects or other community initiatives which in the opinion of the Trustees will benefit Consumers.
- 5.4 The Trustees may request the Directors to produce a report in respect of each Dividend received by the Trustees which report recommends an appropriate allocation of the Dividend amongst the classes of Consumer based on the contribution made by each class of Consumer to the earning of that Dividend and in such report the Directors may classify Consumers in any manner they see fit.
- 5.5 Any of the Consumers to whom or in respect of which income is paid, applied or appropriated by the Trustees pursuant to clause 5.3, shall, subject to clause 5.8, as from the date of such payment, application or appropriation take an absolute and indefeasibly vested interest in such income.
- 5.6 The foregoing provisions as to vesting of income shall not operate to vest any part of the corpus of the Trust Fund in any of the Consumers.
- 5.7 Each Trustee who is also a Consumer shall notwithstanding the provisions of this Deed or any applicable rule of law or equity, be entitled to receive any benefits as a Consumer which may be distributed to Consumers in accordance with clause 5.3.
- 5.8 All payments made to Consumers or entitlements of Consumers to goods and services unclaimed for one year after having been sent (or attempted to be so sent) or notified to any Consumer may be invested or otherwise made use of by or being an entitlement to goods and services disposed of by the Trustees for the benefit of the Trust Fund until claimed and the Trustees shall be entitled to mingle the amounts of any unclaimed payments or money from entitlements with other moneys forming part of the Trust Fund and to credit any income arising in any Financial Year from the investment of such unclaimed payments to the Trust Fund. Any amounts unclaimed on the earlier of the Termination Date or one year after that amount was sent (or attempted to be so sent) or notified to any Consumer shall thereupon be deemed to form part of the Trust Fund.

## 6. TRUSTS OF CAPITAL

- 6.1 The Shares and Other Securities or the proceeds of sale or other disposition of the Shares and Other Securities and investments representing the same (the corpus of the Trust Fund) shall be held by the Trustees upon trust to pay, apply or allocate the same, on or before the Termination Date for the benefit of the Consumers in such manner and in such shares as the Trustees in their absolute and unfettered discretion consider fair and equitable **PROVIDED THAT** the Trustees may at any time or times prior to the Termination Date pay, apply or allocate the corpus of the Trust Fund or any part of parts thereof as the Trustees think fit for the benefit of the Consumers in any of the ways set out in clause 5.3 of this Deed as if the provisions of clause 5.3 and clause 9.3 with any necessary changes were reproduced in this clause 6.1.

- 6.2 From and after the Termination Date the Trustees shall stand possessed of the corpus of the Trust Fund and the income thereof and any income previously derived by the Trustees that has not been paid, applied or appropriated in accordance with clause 6.1 of this Deed, upon trust to pay, apply or appropriate the same to or for or otherwise howsoever for the benefit of the Consumers in such manner and in such shares (including if permitted by law, by establishing a further trust for the benefit of Consumers to be on the same terms mutatis mutandis as this Trust) as the Trustees shall in their absolute and unfettered discretion consider fair and equitable provided however that if the Trustees have not so paid, applied or appropriated any or all of such Trust Fund and income on the day before the first anniversary of the Termination Date the amount so remaining shall be paid in equal shares to each Consumer as at the first anniversary of the Termination Date.

## **7. APPOINTMENT, RETIREMENT AND PROCEEDINGS OF TRUSTEES**

The rules set forth in schedule I hereto (with such amendments, deletions and additions thereto as may lawfully be made) shall upon the execution of this Deed govern the appointment, retirement and proceedings of the Trustees and associated matters.

## **8. GENERAL POWERS**

- 8.1 The Trustees may exercise the powers, authorities and discretions conferred by this Deed in addition to and not by way of limitation of the powers, authorities and discretions conferred upon the Trustees generally by the Trustee Act (except where otherwise specified in this Deed). For the avoidance of doubt, no Trustee shall have the power, authority or discretion to participate in the management or operation of the Company (other than in the capacity as a Director appointed to the board of the Company and where the Trustee was nominated for that office pursuant to a Special Resolution of the Trustees) and in exercising the powers conferred by this clause and clause 9 the Trustees shall be restricted to exercising their rights as a shareholder subject always to the provisions of this Deed.
- 8.2 In the exercise of any power, authority or discretion under this Deed the Trustees shall have no obligation to deal with persons other than those who qualify as Consumers as defined in this Deed and in particular shall not be required to recognise any trust or other arrangement affecting any Consumer nor shall the Trustees be liable in any respect for any inaccuracies in the records of the Company which affect the status of any person as being or not being a Consumer.

## **9. TRUSTEES' POWERS**

- 9.1 Subject to the express terms of this Deed (and without limiting the generality of the foregoing) the Trustees shall have in relation to the Trust Fund and the income arising from the Trust Fund all the same powers as a natural person acting as beneficial owner of the property from time to time comprising the Trust Fund and such powers shall not be restricted by any principle of construction or rule of law except to the extent that such is obligatory.
- 9.2 Without limiting the generality of the preceding paragraph and merely by way of example the Trustees shall have the powers set out in schedule II to this Deed which may be exercised either alone or jointly with any other person.

9.3 Notwithstanding clause 9.1, the Trustees shall not dispose (whether legally or beneficially) of any interest in the Shares or any other asset of the Trust Fund (and where more than one asset of the Trust Fund is disposed of in one or more transactions which substantially represent a single disposition of assets those assets shall be regarded as a single asset) unless:

- (a) the disposal has been approved by a Special Resolution of the Trustees;
- (b) Where the disposition is of Securities and the number of Securities proposed to be disposed of:
  - (A) is equal to or greater than five (5) percent of the Base Level for Securities; or
  - (B) when aggregated with any previous dispositions of Securities which have not been the subject of a Consumer Consultative Procedure, would be equal to or greater than five (5) percent of the Base Level for Securities,

the Trustees have first implemented a Consumer Consultative Procedure in respect of the proposed disposal Provided That the following Securities may be disposed of without restriction and the provisions of this clause 9.3(b) shall not apply to such dispositions:

- (i) any Excess Securities;
- (ii) any Securities so long as contemporaneously therewith:
  - (I) Securities are acquired which have voting rights which are at least equal in number to the voting rights attaching to the Securities being disposed of; or
  - (II) The Trust enters into an agreement or agreements to acquire Securities having voting rights which are at least equal in number to the voting rights attaching to the Securities being disposed of.
- (c) Where the disposition is of an asset other than Securities which exceeds (or when aggregated with the value of assets other than Securities previously disposed of which were not subject to a Consumer Consultative Procedure exceeds) in value five (5) percent of the value of the Trust Fund, the Trustees have first implemented a Consumer Consultative Procedure in respect of the proposed disposal Provided That the provisions of this clause 9.3(c) shall not apply where, following the disposition, the Trust would still hold a Base Level for Securities or Securities and/or other assets which have voting rights which are at least equal in number to the voting rights attaching to a Base Level for Securities.
- (d) For the purposes of clauses 9.3(b) and (c), the expressions:

“Base Level for Securities” at any time means 87,466,000 Securities;

"Excess Securities" at any time means securities in the Company held by the Trust in excess of the Base Level for Securities; and

"dispose", "disposed" and "disposition" shall not include the giving of a mortgage (legal or equitable), charge or other encumbrance.

- 9.4 Notwithstanding the provisions of section 13C of the Trustee Act 1956 and the likelihood that the Trustees will from time to time include persons whose profession, employment or business is or includes acting as a trustee or investing money on behalf of others, the care diligence and skill to be exercised by the Trustees in exercising any power of investment shall not be that required of such persons by section 13C of the Trustee Act 1956 but, subject always to clause 9.5, shall at all times be the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others.
- 9.5 Notwithstanding anything else in this Deed, no Trustee shall be liable for any breach of trust in respect of any duty to exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others or that a prudent person engaged in a profession, employment or business that is or includes acting as a trustee or investing money on behalf of others would exercise in managing the affairs of others merely (in either case) because the investments of the Trust Fund (including, but without limitation, the Securities) are not diversified.

## 10. DUTIES OF TRUSTEES

- 10.1 The Trustees shall ensure that full and correct accounts of all the financial transactions of the Trust and its assets and liabilities and funds are kept.
- 10.2 The Trustees shall within four months after the end of each Financial Year:
- (a) prepare Financial Statements in accordance with generally accepted accounting practice (within the meaning of section 3 of the Financial Reporting Act 1993, applied as if the Trust was a reporting entity) with respect to the affairs of the Trust for that Financial Year;
  - (b) submit those Financial Statements to an auditor for audit; and
  - (c) make available to the public (which includes all Consumers) in accordance with clause 10.4 those audited Financial Statements and the auditor's report on those Financial Statements.
- 10.3 In addition to clause 10.2(a), the Financial Statements of the Trust shall show separately:
- (a) the total amount of any distribution of income or capital paid to Consumers by way of general distribution (if applicable) in that Financial Year;
  - (b) the names of persons to whom distributions of income or capital have been approved or paid in that Financial Year other than those referred to in clause 10.3(a) together with the individual amounts approved or paid by way of a payment scheme; and

- (c) a statement confirming that the Trustees have complied with all of their obligations under the Code of Practice.
- 10.4 (a) The Trustees shall make the documents referred to in clause 10.2(c) available to the public (which includes all Consumers) by making copies of them available:
- (i) for inspection at every office of the Trust or at any other place specified in the notification under clause 10.4(b) (during ordinary office hours) free of charge; and
  - (ii) for purchase at a reasonable price.
- (b) The Trustees shall notify the fact that copies of such documents are so available by advertisement in the news section of two separate editions of each newspaper that is widely read by Consumers.
- 10.5 (a) The Trustees shall in each Financial Year, hold a General Meeting of Consumers at which the Consumers:
- (i) (in respect of a general meeting of Consumers held in a year where no election of Trustees is required to be held) appoint an Independent Returning Officer to hold office from the conclusion of that meeting until the next general meeting of Consumers to be held in a non-election year;
  - (ii) appoint an auditor to hold office from the conclusion of that meeting until the conclusion of the next annual General Meeting of Consumers; and
  - (iii) if applicable, fix the amount of remuneration payable to Trustees pursuant to clause 12.1(b)(i).
- (b) (i) The Trustees may fill any casual vacancy in the office of Independent Returning Officer by appointing an Independent Returning Officer to hold office until the conclusion of the next general meeting of Consumers to be held in a year where no election of Trustees is required to be held (but, while the vacancy remains, the surviving or continuing Independent Returning Officer, if any, may continue to act as Independent Returning Officer).
- If no Independent Returning Officer is appointed in accordance with clause 10.5(a), or a casual vacancy in the office of Independent Returning Officer is not filled within one month of the vacancy occurring in accordance with this clause, the Secretary shall be the Independent Returning Officer who shall hold office until the conclusion of the next general meeting of Consumers to be held in a year where no election of Trustees is required to be held.
- (i) The Trustees may fill any casual vacancy in the office of auditor by appointing an auditor to hold office until the conclusion of the next



annual meeting of Consumers (but, while the vacancy remains, the surviving or continuing auditor, if any, may continue to act as auditor).

- (c) (i) The fees and expenses of the Independent Returning Officer must be fixed:
  - (A) at the general meeting of Consumers or in the way the Consumers determine at the meeting, if appointed at the general meeting; or
  - (B) by the Trustees, if appointed by the Trustees.
- (ii) The fees and expenses of the auditor must be fixed:
  - (A) at the annual meeting of Consumers or in the way the Consumers determine at the meeting, if appointed at the annual meeting; or
  - (B) by the Trustees, if appointed by the Trustees.
- (d) (i) The Independent Returning Officer must be a person who, in the opinion of Trustees, is suitably qualified to act as an independent returning officer and who has no material conflict of interest with the Trust or its affairs. For the avoidance of doubt, the Independent Returning Officer cannot be a Trustee, a person who would be deemed to be "interested" pursuant to clause 14 of Schedule 1 if that person was in fact a Trustee, a candidate nominated for election pursuant to clause 3.4 of Schedule 1, a Director employee or agent of the Trust or of the Company, or a Consumer.
- (i) The auditor of the Trust:
  - (A) must be a person who is qualified to act as an auditor under section 199(1) of the Companies Act 1993 and, in selecting an auditor, the Consumers may seek the advice of the Auditor-General; and
  - (B) must not be a Trustee, Director, employee or agent of the Trust or of the Company or otherwise disqualified from being an auditor under section 199(2)(b) and (d) of the Companies Act 1993.
- (e) (i) The Independent Returning Officer shall be entrusted with the whole conduct of a Trustee election held pursuant to this Trust Deed. The Independent Returning Officer shall have power to and shall:
  - (A) appoint such scrutineers and other assistants and delegate to them such powers and duties as it shall see fit;
  - (B) provide for the due secrecy, fair conduct and professional nature of any Trustee election process which is to be undertaken in accordance with the relevant provisions of

Schedule 1 (as amended from time to time) and the Code of Conduct;

- (C) generally do all things necessary, expedient or advisable in its opinion for the proper conduct of any Trustee election;
  - (D) where circumstances arise which create doubt or uncertainty in any Trustee election process, seek, at the Trust's cost, independent advice in the form of a legal opinion on such matters and upon which it may rely in order to resolve or clarify such uncertainties;
  - (E) monitor statements which are brought to the attention of the Independent Returning Officer or which are made publicly by incumbent Trustees and/or election candidates in relation to any Trustee election to ensure that such statements are factually correct and not misleading. The Independent Returning Officer shall be entitled to require that person making offending statements to retract or correct such statements and may, if thought appropriate in the circumstances, publicly correct any misstatements or inaccuracies of fact on that persons behalf if they fail to do so in an appropriate manner and within an appropriate period of time and may disqualify a candidate from a Trustee election or take such other action that he/she may think fit in his/her sole discretion in order to meet the purpose and objectives of this Deed and the Code of Conduct in relation to a Trustee election; and
  - (F) be entitled to be indemnified against the Trust Fund and be reimbursed for any reasonable expenses incurred by it in the exercise of its duties and powers under this Trust Deed.
- (ii) In addition, sections 198, 200 and 202 to 207 of the Companies Act 1993 apply in relation to the auditor. These sections of the Companies Act 1993 apply as if references to a company were to the Trust, references to a director were to a Trustee, references to a board were to the Trustees, references to shareholders were to Consumers, references to a subsidiary were to an electricity company owned by the Trust and that company's subsidiaries, and all other necessary modifications were made. In this clause, "electricity company" has the meaning set out in section 3(1) of the Electricity Industry Reform Act 1998.
- 10.6 (a) The Trustees must give no less than 14 days' notice of the annual meeting of Consumers in the news section of two separate editions of each newspaper that is widely read by Consumers.
- (a) Every Consumer shall have one vote.
  - (b) The quorum for the annual meeting is 20 Consumers.

- (c) No business may be transacted at the annual meeting if a quorum is not present.
  - (d) Regulations if issued under section 172C of the Electricity Act 1992 shall govern proceedings at such annual meetings of Consumers but if no such Regulations have been issued, then such proceedings shall be determined by the Trustees.
- 10.7 (a) If no auditor is appointed in accordance with clause 10.5(a) or a casual vacancy in the office of auditor is not filled within one month of the vacancy occurring in accordance with clause 10.5(b), the Auditor-General shall be the auditor of the Trust.
- (a) The Trustees shall, within five working days of clause 10.7(a) becoming applicable, give written notice to the Auditor-General of this fact.
  - (b) If this clause 10.7 applies, the sections and parts of the Public Audit Act 2001 listed in section 19 of that Act shall apply to the Trust until an auditor is appointed at an annual meeting of Consumers, as if references in those sections to a public entity were references to the Trust and with any other necessary modifications.
- 10.8 The Trustees shall, from time to time, make a copy of this Deed available to Consumers in accordance with clause 11.
- 10.9 The Trustees shall comply with the provisions of the Code of Practice in effect from time to time.
- 10.10 The Trustees shall:
- (a) keep confidential all Confidential Information (and its existence) which has been provided to or become available to either the Trust or Trustee(s);
  - (b) not disclose or otherwise publish Confidential Information, nor make any copies of, or record any extracts from, Confidential Information and must use their best endeavours to ensure that to the extent possible by law no other person does so; and
  - (c) not use Confidential Information other than for the purpose of the proper discharge in good faith of duties and obligations created by the Trust, with the exception of Confidential Information provided in confidence to a professional advisor of the Trust or to a Trustee for the purposes of the obtaining of advice as to the discharge in good faith of duties and obligations created by the Trust and with the further expectation of compliance with any order or determination made by any Court or lawful authority.

Trustees acknowledge that a breach of Trusteeship dealing with matters of confidentiality and Confidential Information may amount to a breach of trust of such a serious nature as to justify an expectation of resignation by the defaulting Trustee, failing which action by the Trust for removal from office may be proper.

## 11. INFORMATION TO CONSUMERS

- 11.1 Subject to clause 10.4, for the purpose of complying with any requirement under this Deed to make any document or information available to Consumers, it shall be sufficient for the Trustees to make such document or information available for inspection at any office of the Trust or any office of the Company or at any other place in the District during normal business hours on any business day.
- 11.2 The Trustees shall give not less than three days' notice in a principal newspaper or newspapers circulating in the District of the place at which and the times when such documents or information may be inspected by Consumers.

## 12. REMUNERATION AND EXPENSES OF TRUSTEES

- 12.1 (a) Any Trustee hereof who shall be employed in connection with the trusts hereof may be paid all such remuneration for their services as may be normal as if they had been employed in that behalf and had not been a Trustee hereof.
- (a) (i) The Trustees (other than a Trustee remunerated pursuant to clause 12.1(a) to the extent that such remuneration covers services to which this clause 12.1(b) applies) shall be entitled in each Financial Year to such remuneration for their services as may be reasonable having regard to their duties and responsibilities as Trustees.
- (i) No remuneration shall be paid to a Trustee pursuant to clause 12.1(b)(i) unless that remuneration has been authorised by a resolution of Consumers passed at a General Meeting of Consumers held pursuant to clause 10.5(a) provided that the total remuneration (including meeting allowances) payable to Trustees for the financial year ending 31 March 2004 shall be deemed to have been duly authorised by Consumers for the purposes of this clause. Each such resolution shall express Trustees' remuneration as either:
- (A) a monetary sum per annum payable to all Trustees taken together; or
- (B) a monetary sum per annum, plus meeting allowances, payable to any person who from time to time holds office as a Trustee or as the Chairperson or as the Deputy Chairperson.
- In the event of an increase in the total number of Trustees holding office, the Trustees may, without the authorisation of a resolution of Consumers, increase the total remuneration by such amount as is necessary to enable the additional Trustee or Trustees to receive remuneration, including provision for meeting allowances, not exceeding the average amount then being paid to each of the other Trustees (excluding the Chairperson).
- (ii) No resolution which increases the amount fixed pursuant to a previous Consumer resolution shall be passed at a General Meeting of

Consumers unless notice of the amount of increase has been given in the notice of meeting.

- (iii) Trustees' remuneration paid pursuant to clause 12.1(a) may be approved by the Trustees without the need for Consumer approval.

12.2 The Trustees shall be entitled to be indemnified against, and reimbursed for, any expenses incurred by them in the exercise of their powers and duties under this Deed.

12.3 The payments of remuneration and expenses to the Trustees pursuant to rule 12.1(a), 12.1(b) or rule 12.2 shall be paid out of the Trust Fund or any other fund available for that purpose.

### **13. VARIATION TO TRUST DEED**

13.1 The Trustees shall have the power by Special Resolution (of which notice to propose that Special Resolution shall have been given in the notice convening the meeting) to alter or amend the terms of this Deed other than clause 13.2 and the provisions set out in clause 13.2 which shall only be capable of being altered or amended in the manner set out in clause 13.2.

13.2 The Trustees shall have power on a unanimous resolution of all the Trustees after the Trustees have implemented a Consumer Consultative Procedure in respect of such proposal to alter or amend:

- (a) the definition of "Consumers" or "District"; and
- (b) clauses 4, 5, 6, 9.3 or 14.

13.3 Notwithstanding clauses 13.1 and 13.2, no alteration or amendment may be made to this Deed that has the effect of limiting or restricting the obligations or powers of the Trustees under this Deed to:

- (a) review proposals and available options for the ownership of the Shares; or
- (b) sell, transfer or dispose of the Shares in accordance with clause 9.3.

### **14. WINDING UP OF TRUST**

14.1 The Trustees may at any time after first having implemented a Consumer Consultative Procedure resolve by unanimous resolution to wind up the Trust.

14.2 If the Trust holds less than 5 per cent of the total share capital of the Company and does not hold any debt security issued by the Company the Trustees shall implement a Consumer Consultative Procedure to determine whether to wind up the Trust.

14.3 If a resolution to wind up the Trust has not been passed by 1 January 2072, the Trustees shall as soon as practical thereafter pass the resolutions requiring the Trust to be wound up. If the resolutions have not been passed by 1 July 2072 the provisions of clause 14.4 shall apply as if the resolutions had been passed.

14.4 On the winding up of the Trust, all surplus assets after the payment of all costs, debts and liabilities shall be paid, applied or appropriated to or for or otherwise howsoever for the benefit of Consumers in accordance with Clause 6.2.

**15. LIABILITY**

15.1 No Trustee acting or purporting to act in the execution of the trusts of this Deed shall be liable for any loss not attributable to that Trustee's own dishonesty or to the wilful commission or omission by that Trustee of an act where such commission or omission is known by the Trustee to be a breach of trust and in particular no Trustee shall be bound to take or be liable for failure to take any proceedings against a co-Trustee for any breach or alleged breach of trust committed by such co-Trustee.

15.2 Every Trustee shall be chargeable only for such moneys as shall actually have been received by that Trustee although that Trustee may have joined in any receipt for money received by any other Trustee. No Trustee shall be answerable for the acts or omissions of any other Trustee nor for any loss which may arise by reason of any trust funds being lawfully deposited in the hands of any banker, solicitor or agent or for the sufficiency, insufficiency or deficiency of any security upon which any trust money or any part thereof may be invested or for any loss in the execution of any trust unless the same shall happen through that Trustee's neglect or default.

**16. INDEMNITY**

Any Trustee, officer or employee of the Trust shall be indemnified out of the assets of the Trust for and in respect of any loss or liability which such Trustee may sustain or incur by reason of the carrying out or omission of any function, duty or power under this Deed and also in respect of any expenses incurred by the Trustee in the management and administration of the Trust Fund unless such loss or liability is attributable to that Trustee's dishonesty or to the wilful commission of an act known by the Trustee to be a breach of trust or to the wilful omission by such Trustee of any act when that omission is known by such Trustee to be a breach of trust.

**17. NOTICES**

17.1 Any notices or documents to be given to the Trustees pursuant to this Deed shall be in writing signed by the person giving the notice and served at the office of the Trust.

17.2 Any notice or document given pursuant to clause 17.1 shall be deemed to be duly given or made:

- (a) if delivered by hand, when so delivered;
- (b) if sent by facsimile, when receipt is confirmed;
- (c) if sent by post, on the third working day after posting.

**IN WITNESS WHEREOF** this Deed has been executed the day and year first hereinbefore written.

Executed as a Deed

**THE COMMON SEAL of TRUSTPOWER LIMITED** was affixed in the presence of:

*"A Carpenter"*

-----  
Signature of Authorised Person

*Avon Leavett Carpenter*

-----  
Name of Authorised Person

*Chairman*

-----  
Office Held

*"K Tempest"*

-----  
Signature of Authorised Person

*Keith Neville Tempest*

-----  
Name of Authorised Person

*Secretary*

-----  
Office Held

**SIGNED by  
SHIRLEY MARGARET CROWLEY**  
in the presence of:

*"C Bogun"*

-----  
Signature of Witness

*C M Bogun*

-----  
Name of Witness

*Secretary*

-----  
Occupation of Witness

*Tauranga*

-----  
Town of Residence

*"S M Crowley"*

-----  
Signature of **SHIRLEY MARGARET CROWLEY**

**SIGNED by  
IAN FREDERICK FOOTE**  
in the presence of:

*"C Bogun"*

-----  
Signature of Witness

*C M Bogun*

*"I F Foote"*

-----  
Signature of **IAN FREDERICK FOOTE**

Name of Witness

*Secretary*

-----  
Occupation of Witness

*Tauranga*

-----  
Town of Residence

**SIGNED by**  
**BARRY WALTER BRAME JENSEN**  
in the presence of:

*"C Bogun"*

-----  
Signature of Witness

*C M Bogun*

-----  
Name of Witness

*Secretary*

-----  
Occupation of Witness

*Tauranga*

-----  
Town of Residence

**SIGNED by**  
**NOEL HAYWARD JOHNSON**  
in the presence of:

*"C Bogun"*

-----  
Signature of Witness

*C M Bogun*

-----  
Name of Witness

*Secretary*

-----  
Occupation of Witness

*"B W B Jensen"*

-----  
Signature of **BARRY WALTER BRAME JENSEN**

*"Noel H Johnson"*

-----  
Signature of **NOEL HAYWARD JOHNSON**



*Tauranga*

-----  
Town of Residence

**SIGNED by**  
**NORMAN FREDERICK MAYO**  
in the presence of:

*"C Bogun"*

-----  
Signature of Witness

*C M Bogun*

-----  
Name of Witness

*Secretary*

-----  
Occupation of Witness

*Tauranga*

-----  
Town of Residence

**SIGNED by**  
**EDWARD McGREGOR MURRAY**  
in the presence of:

*"C Bogun"*

-----  
Signature of Witness

*C M Bogun*

-----  
Name of Witness

*Secretary*

-----  
Occupation of Witness

*Tauranga*

-----  
Town of Residence

*"N F Mayo"*

-----  
Signature of **NORMAN FREDERICK MAYO**

*"E Murray"*

-----  
Signature of **EDWARD McGREGOR MURRAY**

**SIGNED by**  
**NOEL FRANK POPE**  
in the presence of:

*"C Bogun"*

-----  
Signature of Witness

*C M Bogun*

-----  
Name of Witness

*Secretary*

-----  
Occupation of Witness

*Tauranga*

-----  
Town of Residence

**SIGNED by**  
**LYN ARTHUR WAHREN**  
in the presence of:

*"C Bogun"*

-----  
Signature of Witness

*C M Bogun*

-----  
Name of Witness

*Secretary*

-----  
Occupation of Witness

*Tauranga*

-----  
Town of Residence

*"N F Pope"*

-----  
Signature of **NOEL FRANK POPE**

*"L A Wahren"*

-----  
Signature of **LYN ARTHUR WAHREN**

**SIGNED by**  
**RUFUS GEORGE WALLINGFORD**  
in the presence of:

*"C Bogun"*

-----  
Signature of Witness

*C M Bogun*

-----  
Name of Witness

*Secretary*

-----  
Occupation of Witness

*Tauranga*

-----  
Town of Residence

*"R G Wallingford"*

-----  
Signature of **RUFUS GEORGE WALLINGFORD**

## SCHEDULE I

### RULES GOVERNING THE APPOINTMENT, RETIREMENT AND PROCEEDINGS OF THE TRUSTEES

#### 1. NUMBER OF TRUSTEES

- 1.1 Until the first Annual General Meeting as provided herein the number of Trustees shall be not less than six (6) nor more than nine (9) and after that date the number of Trustees shall be six (6) **PROVIDED THAT** if at any time there are less than the minimum number of Trustees in office specified for that period the remaining Trustees shall be entitled to act until the number of Trustees is restored to the minimum number and no act or decision of the Trustees shall be called in to question on such account.
- 1.2 The Trustees who have executed this deed as first trustees shall hold office until the conclusion of the first Annual General Meeting on which date six (6) of the Trustees (and any Trustee who may have been appointed to fill a casual vacancy of any of the first Trustees or a successor to any of the first Trustees) shall retire. The Trustees shall determine who among them shall retire (and, in the case of disagreement, this shall be determined by the drawing of lots).
- 1.3 Prior to the first Annual General Meeting three (3) Trustees shall be elected to replace the six (6) Trustees retiring in accordance with rule 1.2 in the manner specified in rule 3.4, such appointment to take effect contemporaneously with the retirement required by rule 1.2. A retiring Trustee shall be eligible for nomination for election subject to the other provisions of this Deed.
- 1.4 At the conclusion of the third Annual General Meeting those first Trustees who did not retire pursuant to rule 1.2 (and any Trustee who may have been appointed to fill a casual vacancy of any of the first Trustees or a successor to any of the first Trustees) shall retire.
- 1.5 Prior to the third Annual General Meeting three (3) Trustees shall be elected to replace the three (3) Trustees retiring in accordance with rule 1.4 in the manner specified in rule 3.4, such appointment to take effect contemporaneously with the retirement required by rule 1.4. A retiring Trustee shall be eligible for nomination for election subject to the other provisions of this Deed.
- 1.6 From and including the fifth Annual General Meeting and at every second Annual General Meeting occurring thereafter, three (3) Trustees shall retire from office. The Trustees to retire at any Annual General Meeting shall firstly be any Trustee(s) (if any) appointed to fill any casual vacancy since the last Trustee election and secondly the required number of elected Trustees (to make the number of retiring Trustees three (3) in total) who have been longest in office **since their election**. If there are more elected Trustees due to retire than the required number of elected Trustees to retire as determined in accordance with the previous sentence, then the elected Trustees to retire shall be determined by

lot. Such retiring Trustees shall retire at the conclusion of the relevant Annual General Meeting.

Where a casual vacancy is not filled pursuant to clause 1.7 of this Schedule and remains open at the next Annual General Meeting at which an election of Trustees is to take place, then (for the purposes of this clause and in order to determine the required number of elected Trustees to retire) such vacancy shall be deemed to be have been filled.

The new Trustees who have been elected in accordance with clause 3.4 of this Schedule, who may, subject to the other provisions of this Deed, include Trustees who have retired, shall be appointed at the conclusion of that Annual General Meeting.

1.7 Any casual vacancy in the number of Trustees:

- (a) shall, in the case of a vacancy occurring more than 12 months prior to the next scheduled election of Trustees; or
- (b) may, in any other case,

be filled within 3 months of that vacancy occurring providing that the new appointee shall, subject to clause 1.6, hold office only for the residue of the term of office of the Trustee whose place is taken.

Any new appointee may be chosen at the discretion of the remaining Trustees having regard to the range and nature of skills of the appointee so that such skill set complements those of the remaining Trustees and which will add value to the good decision making by Trustees in their administration of the Trust.

## 2. ELIGIBILITY

2.1 Subject to rule 2.2, the following persons shall not be eligible for appointment as a Trustee and may not hold office as a Trustee:

- (a) a bankrupt who has not obtained a final order of discharge or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled, or to any order under section 111 of the Insolvency Act 1967;
- (b) a person who has been convicted of any offence punishable by a term of imprisonment of two or more years unless that person has obtained a pardon or has served the sentence or otherwise suffered the sentence imposed upon that person;
- (c) a person who has been sentenced to imprisonment for any offence unless that person has obtained a pardon or has served the sentence;
- (d) a person to whom an order made under section 189 of the Companies Act 1955 applies;

- (e) a person who is mentally disordered within the meaning of the Mental Health Act 1969;
- (f) a person who is subject to a property order made under section 30 or section 31 of the Protection of Personal and Property Rights Act 1989;
- (g) a person who is not ordinarily resident in the District;
- (h) a person who is an employee or a Director of the Company (other than a Trustee who has been appointed to the board of the Company as a Director following nomination for that office pursuant to a Special Resolution of the Trustees);
- (i) the Secretary or the Treasurer;
- (j) a person who is not, or who ceases to be, a Consumer.
- (k) a person who is, or becomes, a member of parliament in New Zealand;
- (l) a person who is, or becomes, a councillor or employee of any Local Authority whose territory includes any part of the District;
- (m) a person who is, or becomes, a member (whether elected or appointed) of a Community Board (as that term is defined in the Local Government Act 1974) whose territory includes any part of the District.

2.2 A person shall not be disqualified from appointment and may continue to hold that office:

- (a) in any case to which rule 2.1(b) applies, until the expiration of the time for appealing against the conviction and, in the event of an appeal against conviction, until the appeal has been determined;
- (b) in any case to which rule 2.1(c) applies, until the expiration of the time for appealing against the sentence of imprisonment and, in the event of an appeal, until the appeal has been determined;
- (c) in any case to which rule 2.1(h) applies, until the declaration of the result of the first election of Trustees pursuant to rule 3.4(e) or 3.4(k);
- (d) in any case to which rule 2.1(h) applies, after the declaration of the result of the first election of Trustees pursuant to rule 3.4(e) or 3.4(k), if the Trustee resigns the office or employment disqualifying that Trustee from holding office as Trustee, which resignation is to have effect within two weeks of appointment as a Trustee.

### 3. TERM OF OFFICE

3.1 A Trustee shall cease to hold office if:

- (a) the Trustee resigns by written notice to the Trustees;
  - (b) the Trustee is ineligible for election or appointment as a Trustee pursuant to rule 2.1;
  - (c) the Trustee dies while holding office as a Trustee;
  - (d) the Trustee is not re-elected pursuant to rule 3.4, when the Trustee shall retire at an Annual General Meeting as specified in rule 3.4(n);
  - (e) the Trustee does not attend 3 consecutive monthly Trustee meetings of which notice has been properly given without the prior consent of the remaining Trustees.
- 3.2 The provisions of rule 2.2 shall apply, mutatis mutandis, to rule 3.1. During any appeal period the Trustee shall be deemed to have taken leave of absence and shall not be capable of acting as a Trustee. If the conviction or sentence of imprisonment (as the case may be) is not upheld the Trustee shall be immediately reinstated. If the conviction or sentence (as the case may be) is upheld the disqualification as Trustee shall take immediate effect.
- 3.3 Upon every appointment, reappointment, retirement or cessation of office of any Trustee the Trustees shall cause an entry thereof to be recorded in the minute book of the Trust.
- 3.4 Other than the first Trustees as set out in rule 1.2 and any casual vacancy Trustee(s) appointed pursuant to rules 1.7 and 5(c), all Trustees shall be elected by the Consumers (determined in accordance with rule 3.4(o) and every reference to "Consumers" in rules 3.4(f), (g) and (i) shall be a reference to those Consumers as so determined) in the following manner, or in such other manner as the Trustees may by Special Resolution determine from time to time:
- (a) Not later than nine weeks before the proposed date of the election the Independent Returning Officer shall insert a notice in a newspaper or newspapers circulating in the District giving:
    - (i) advice of the proposed election;
    - (ii) the place or places at which nomination forms may be obtained;
    - (iii) where completed nominations may be lodged; and
    - (iv) notice that the nominator, candidate and seconder must be, at the time of making the nomination, Consumers;
    - (v) the day and time nominations close.
  - (b) Every nomination of a candidate shall be in writing. Nomination forms shall be in such form as the Independent Returning Officer decides, but shall include:

- (i) the full name and address of the candidate;
- (ii) a statement by the candidate that the candidate is not, and to the best of the candidate's knowledge and belief will not be on the date of the election, disqualified from holding office as a Trustee by reason of any of the matters set out in rule 2.1. If the candidate would be disqualified from holding office because of rule 2.1(h), the candidate shall not be so disqualified if the statement is accompanied by a further statement that should that candidate be elected he or she shall immediately resign that office or employment which causes him or her to be disqualified under rule 2.1(h); and
- (iii) the signature of the nominator and seconder and the candidate all of whom must be Consumers.

The Independent Returning Officer shall be entitled to declare any nomination invalid where on reasonable grounds he has good cause to believe that the candidate is ineligible for election in terms of rule 2.1.

- (c) The nomination of a candidate shall be deemed to have never been made, and the candidate shall be ineligible for election, if the:
  - (i) nominator withdraws the nomination by notice received by the Independent Returning Officer before closure of nominations;
  - (ii) candidate withdraws by notice received by the Independent Returning Officer before a result is declared;
  - (iii) candidate dies before a result is declared;
  - (iv) candidate becomes disqualified by virtue of rule 2.1 before a result is declared.
- (d) Nominations shall close four weeks after the first notice calling for nominations was given pursuant to rule 3.4(a).
- (e) If, on the closure of nominations, the number of valid nominations which have been received are equal to or less than the number of vacancies for the office of Trustee the Independent Returning Officer shall declare the candidates duly elected and no election shall be held. If less nominations are received than there are vacancies, the Trustees shall forthwith fill the vacancy or vacancies in accordance with rule 1.7 and a retiring Trustee who has not been nominated shall be eligible to fill a vacancy.
- (f) Should nominations be received for more than the number of vacancies, the Independent Returning Officer shall conduct an election of Trustees pursuant to this clause 3.4.

The Independent Returning Officer may, acting upon an instruction of the Trustees, use any of the following voting methods:



- (i) the method of voting commonly known as booth voting;
- (ii) the method of voting commonly known as postal voting;
- (iii) any form of electronic voting;
- (iv) any method of voting involving a combination of more than one of the methods referred to in subparagraphs (i) to (iii) above; or
- (v) any other method of voting, howsoever described.

The Independent Returning Officer shall give, not less than three weeks prior to the date on and the time at which voting is to close (in this clause 3.4, "Voting Period"), to the Consumers, in such manner as the Independent Returning Officer shall deem fit, a postal and/or electronic ballot paper which shall contain:

- (vi) the names of all candidates validly nominated in alphabetical order of their surnames and appropriate provision for recording the Consumer's vote;
- (vii) if postal voting is to be used, a pre-paid envelope in which the ballot paper is to be placed and returned to the Independent Returning Officer; and
- (viii) a written explanation of the method for recording the Consumer's vote, the manner in which the ballot paper is to be returned, and the date and time at which the Voting Period is to close.

Biographical and other details of the candidates may, if the Trustees approve, be included in the information given to Consumers.

- (g) The following provisions shall apply with respect to votes:
  - (i) each Consumer shall be distributed one voting paper (which may be in electronic format) and each Consumer shall only be entitled to one vote;
  - (ii) in respect of joint Consumers the person whose name appears on the records of the Company first shall exercise the vote for that joint holding to the exclusion of the other joint holders;
  - (iii) Consumers may not vote for the appointment of more Trustees than there are vacancies;
  - (iv) Ballot papers (whether or not in electronic format) received by the Independent Returning Officer after the date and time stated in the notice to Consumers as the date and time at which the Voting Period is to close shall not be counted.
- (h) The Independent Returning Officer shall, after close of the Voting Period, count the number of valid votes cast for each candidate and ascertain the candidates elected. The Independent Returning Officer is permitted and

may in its discretion commence the counting of votes and the processing of ballot papers received prior to the expiry of the Voting Period.

- (i) A vote is invalid and shall not be counted if:
  - (i) the Consumer votes for more candidates than there are Trustees to be elected; or
  - (ii) in the opinion of the Independent Returning Officer, the ballot paper does not clearly indicate the candidate or candidates for whom the Consumer intended to vote.
- (j) Where, because two (2) or more candidates have received the same number of valid votes, the Independent Returning Officer cannot determine which of them has been elected, the Independent Returning Officer shall decide which of them is elected by lot drawn by those candidates in the presence of the Independent Returning Officer and such other person or persons (if any) as the Independent Returning Officer may decide.
- (k) Forthwith after ascertaining which candidates have been elected, the Independent Returning Officer shall declare the names of the candidates so elected, and shall publish those names in one or more principal newspapers circulating in the District. The candidates elected shall be appointed Trustees at the conclusion of the relevant Annual General Meeting as specified in rules 1.3, 1.5 and 1.6.
- (l) After declaring the result of the election the Independent Returning Officer shall decide when to destroy the voting papers and/ or to permanently delete any computer records or files relating to votes cast electronically.
- (m) The Independent Returning Officer and every person assisting the Independent Returning Officer shall faithfully and impartially perform their duties and shall not, directly or indirectly:
  - (i) before the declaration of the result of the election make known the state of the vote, or give or pretend to give any information by which the state of the vote might be known;
  - (ii) make known for which candidate or candidates any person has voted; or
  - (iii) give any person any information likely to defeat the secrecy of the election.
- (n) Notwithstanding any other provision in the Deed or these rules, the retiring Trustees shall remain in office until the conclusion of the Annual General Meeting at which they are to retire as specified in rules 1.3, 1.5 and 1.6. Forthwith upon the conclusion of the relevant Annual General

Meeting the candidates declared elected pursuant to rule 3.4(e) or 3.4(k) shall assume office in place of the retiring Trustees.

- (o) The Consumers who shall be entitled to vote for the appointment of Trustees shall be those persons who are Consumers on the date nominations for candidates close as specified in accordance with rule 3.4(a)(v).

#### **4. CHAIRPERSON AND DEPUTY CHAIRPERSON**

The Trustees shall elect a Chairperson and Deputy Chairperson, who shall also be Trustees, at the first meeting of Trustees after the Annual General Meeting in each year and at any other time when either position becomes vacant.

#### **5. QUORUM**

- (a) A quorum at meetings of the Trustees shall comprise four (4) Trustees.
- (b) Notwithstanding rule 1.1, no business may be transacted at a meeting of Trustees if a quorum is not present.
- (c) Notwithstanding rule 5(b), where the number of Trustees in office at any relevant time is less than the number of Trustees required to form a quorum, then the remaining Trustees may convene a meeting for the sole purpose of appointing additional Trustee(s) so that there are at all times at least the minimum number of Trustees in office required to form a quorum.
- (d) Any new Trustee(s) appointed pursuant to rule 5(c) shall hold office for the period from the date of their appointment until the next Annual General Meeting at which a Trustee election is held. Such new Trustee(s) shall retire at that next Annual General Meeting as if they had been appointed to fill a casual vacancy in terms of rule 1.6.
- (e) Any new Trustee appointed pursuant to rule 5(c) shall have all the powers and responsibilities of a Trustee as if elected to that office pursuant to rule 3.4 and no act or decision of the remaining Trustees pursuant to this rule 5 or of the new Trustee(s) pursuant to this Deed shall be called into question on such account.

#### **6. VALIDITY OF PROCEEDINGS**

- 6.1 All acts done by any meeting of Trustees or of a committee of Trustees or by any person acting as a Trustee shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Trustee or person acting as aforesaid or that they or any of them were for any reason disqualified, be as valid as if such person had been duly appointed and was qualified to be a Trustee.

#### **7. RESCISSION OR VARIATION OF RESOLUTIONS**

Any resolution of the Trustees may be rescinded or varied from time to time by

the Trustees at any subsequent meeting by the same majority as was necessary to pass the resolution being rescinded or varied.

**8. MEETINGS OF TRUSTEES**

8.1 The Trustees shall hold an Annual General Meeting no later than by 30 November in each calendar year.

8.2 The Secretary shall give no less than thirty (30) days notice of the annual general meeting to the Trustees such notice to specify the date, time and place of the annual general meeting.

8.3 (a) The business to be transacted at the Annual General Meeting of Trustees shall be the receipt of the annual report (including a report on the performance of the Trust against its annual plan objectives for the relevant year), the annual plan and the audited Financial Statements and the setting of the remuneration (if any) of Trustees. Any other business shall be deemed special business and shall be dealt with in accordance with rule 8.4.

(a) At the conclusion of the Annual General Meeting of Trustees or at such other time as the Trustees shall decide, the annual meeting of Consumers shall be convened pursuant to clause 10.5 and the Code of Practice for the purposes (among other things if the Trustees so decide) of appointing an Independent Returning Officer for the next Trustee election (in the case of a general meeting of Consumers held in a non Trustee election year), fixing the Independent Returning Officer's fees and expenses, appointing an auditor for the Trust, fixing the auditor's fees and expenses and, if applicable, fixing the amount of remuneration payable to Trustees pursuant to clause 12.1(b)(i).

8.4 Notice in writing of any special business shall be given to the Secretary no less than twenty one (21) days prior to the annual general meeting. The Secretary shall circulate an agenda, including all special business, to the Trustees no later than fourteen (14) days prior to the annual general meeting and shall also give to Consumers not less than fourteen (14) days prior written notice of the time, place, date and agenda of the annual general meeting by an advertisement placed in a newspaper or newspapers circulating in all the areas of the District.

8.5 Consumers shall be entitled to attend and speak at the annual general meeting but shall not be entitled to vote at such meetings.

8.6 The Trustees shall otherwise meet at such times and places as they may agree to dispatch the business of the Trust. The Trustees shall be entitled from time to time to develop protocols and standing orders for the management of Trustee behaviour and for the orderly conduct of Trustee meetings, and any such protocols and / or standing orders so adopted shall bind Trustees in their administration of the Trust.

8.7 Other than a meeting of Trustees called pursuant to rule 5(c), any three (3) or more Trustees may at any time summon a meeting of Trustees.

**9. NOTICE OF MEETINGS**

Notice in writing of every meeting shall be sent by such method of delivery (whether electronic or otherwise) as is determined by the Trustees from time to time to each Trustee by the Secretary or other person acting under the direction of the Trustees. In the case of a meeting summoned pursuant to rule 8.7, the Trustees, persons summoning it or the secretary or other person acting under the direction of the Trustees shall give at least seven (7) working days notice of that meeting. No notice shall be necessary for adjourned meetings except to Trustees not present when the meeting was adjourned.

The expression "working days" in this clause shall exclude weekends and public holidays and such notice period shall exclude the date of the notice and the date of the relevant meeting.

**10. ADJOURNMENT**

If a quorum is not present within thirty minutes after the time appointed for any meeting the Trustee or Trustees present may adjourn the meeting. Any meeting may be adjourned by the Chairperson upon the adoption of a resolution for its adjournment.

**11. CONTENT OF NOTICE**

Every notice of meeting shall state the place, day, and hour of the meeting and every notice of a meeting summoned pursuant to rule 8.7 shall state the matters to be discussed at that meeting. Notice of any meeting may be abridged or waived if all the Trustees who are for the time being in New Zealand consent in writing to such abridgement or waiver.

**12. COMMITTEES**

The Trustees may from time to time appoint any one or more Trustees to be a committee for making any inquiry, for considering supervising or transacting any business of the Trust, for the investment and management of the Trust Funds or any part thereof, or for the performance of any duty or function which in the opinion of the Trustees will further the purposes and objects of the Trust. Subject to these rules and to any directions from time to time given by the Trustees every such committee may regulate its own procedure but so that a quorum at any meeting of the committee will be a majority of its members for the time being.

**13. VOTING**

- 13.1 Except as otherwise provided in this Deed and subject to the quorum requirements as to meetings, the Trustees shall exercise their powers and discretions by a simple majority vote of the Trustees present.
- 13.2 The Chairperson or Deputy Chairperson acting as the chairperson of a meeting of Trustees shall have a second and casting vote in addition to his or her deliberative vote provided that such casting vote may only be exercised in the

case of Trustee deadlock when voting on any particular issue and where such casting vote is made for continuance of the status quo.

#### **14. INTERESTED TRUSTEES**

- 14.1 A Trustee who in any way, whether directly or indirectly, has a material interest in any contract or proposed contract or arrangement or dealing with the Trust (other than as a Consumer or as a member, officer, or employee of any firm, company or organisation that is a Consumer) shall disclose the nature of that interest at a meeting of the Trustees and such disclosure shall be recorded in the minutes of the meeting. A trustee who holds beneficially (directly or indirectly) less than 20,000 shares in the Company shall not be required to disclose that shareholding.
- 14.2 A Trustee required to disclose an interest by rule 14.1 may be counted in a quorum present at a meeting but shall not vote in respect of the matter in which the Trustee is interested (and if the Trustee does so vote the vote shall not be counted) provided that the Trustee may be expressly permitted to vote by a unanimous vote of the other Trustees present given after the disclosure of the interest.
- 14.3 If any question shall arise at any meeting as to the materiality of a Trustee's interest or as to the entitlement of any Trustee to vote and such question is not resolved by the Trustee voluntarily agreeing to abstain from voting, such question shall be referred to the Chairperson of the meeting and the Chairperson's ruling in relation to any such Trustee shall be final and conclusive except in a case where the nature or extent of the interest of the Trustee concerned has not been fairly disclosed.

#### **15. MINUTES**

- 15.1 A minute book shall be provided and kept by the Trustees and all proceedings of the Trustees shall be entered in the minute book.
- 15.2 Minutes signed by the chairperson of the meeting at which the proceedings were transacted or by the chairperson of the next succeeding meeting shall be evidence of the proceedings.
- 15.3 Where minutes of the proceedings at any meeting of Trustees have been made in accordance with the provisions of these rules then, until the contrary is proved, the meeting shall be deemed duly held and convened and all proceedings at that meeting to have been duly conducted.

#### **16. RESOLUTIONS IN WRITING**

Notwithstanding any other provisions in the Deed or these rules, a resolution in writing signed by all the Trustees or (as the case may be) by all the members of a committee, shall be as effective for all purposes as a resolution passed at a meeting of the Trustees or of such committee (as the case may be) duly convened, held and constituted. Such resolution may consist of several documents in the same form, each signed by one or more of the Trustees or members of the committee, (as the case may be).

**17. MEETINGS BY TELEPHONE**

17.1 Notwithstanding any other provision in the Deed or these rules, the contemporaneous linking together of a number of the Trustees or members of a committee ("the participants") being not less than a quorum, together with the Secretary or a person acting as a secretary, shall be deemed to constitute a meeting and all the provisions in these rules as to meetings shall apply to such meetings by telephone so long as the following conditions are met:

- (a) All the participants for the time being entitled to receive notice of a meeting shall be entitled to notice of a meeting by telephone and to be linked by telephone for the purposes of such meeting. Notice of such meeting may be given by telephone;
- (b) Each of the participants taking part in the meeting by telephone, and the Secretary or person acting as a secretary, must be able to hear each of the others taking part at the commencement of the meeting;
- (c) At the commencement of the meeting each participant must acknowledge his or her presence for the purpose of such meeting to all the others taking part;
- (d) A participant may not leave the meeting by disconnecting his or her telephone without having previously obtained the express consent of the chairperson of the meeting and shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone unless having obtained the express consent of the chairperson to leave the meeting as aforesaid.

17.2 Minutes of the proceedings at such meeting by telephone shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the chairperson of the meeting or by the Secretary or person acting as a secretary.

**18. EXECUTION OF DOCUMENTS**

All documents required to be executed by the Trustees shall be deemed to be validly executed and binding on the Trust if these documents have been entered into and executed by the authority of the Trustees previously given and signed by at least two (2) Trustees or any other person approved by the Trustees for the purpose.

**19. SECRETARY AND TREASURER**

19.1 The Trustees shall appoint from time to time a Secretary and a Treasurer who may be the same person.

19.2 It shall be the duty of the Secretary to keep usual records of the business of the Trust and to notify Trustees of intended meetings and the business to be transacted at such meetings.

- 19.3 It shall be the duty of the Treasurer to keep usual and proper books of account and other financial records of the business to report to the Trustees from time to time on the finances of the Trust Fund to present annual statements of account for audit and for consideration by the Trustees and to prepare and file from time to time with the Inland Revenue Department all necessary tax accounts.



## **SCHEDULE II TRUSTEES' SPECIFIC POWERS**

Subject to any express terms in this Deed limiting or restricting such powers, the Trustees shall have the power to:

- (a) Invest the Trust Fund or any portion thereof, notwithstanding that it may be subject to any liability, in any property whether in New Zealand or overseas.
- (b) Sell all or any part of the property comprising the Trust Fund at such price on such terms and subject to such conditions as they in their absolute discretion think fit with power to allow the whole or any part of the purchase money to remain owing as a debt to the Trust.
- (c) Retain property forming part of the Trust Fund.
- (d) Borrow or raise moneys on such terms and subject to such conditions as the Trustees think fit, including giving such security as the Trustees think fit over all or any of the Trust Fund and its undertaking.
- (e) Lease or to take on lease or licence any property on such terms and subject to such conditions as they think fit and to accept or effect such surrenders of leases and licences as they think fit.
- (f) Lend moneys on such terms and subject to such conditions as the Trustees think fit
- (g) Maintain manage repair improve and develop any property which or an interest in which for the time being forms part of the Trust Fund in such manner as the Trustees shall think fit.
- (h) Employ and pay any person (including any Trustee) to do any act of whatever nature relating to the Trust including the receipt and payment of money.
- (i) Open an account or accounts at any time or times in any name or names and either on their own behalf or jointly with another at any bank and to overdraw any such account with or without giving security and in addition to the powers conferred by section 81 of the Trustee Act 1956 to make arrangements with any Bank for any one or more of the following, namely, the Trustees and/or any delegate or delegates named in writing by all the Trustees to operate upon any account at that Bank. All sums of money received on account of the Trust shall be forthwith paid into the credit of such account or accounts unless otherwise expressly ordered by the Trustees. All negotiable instruments and all receipts for money paid to the Trust shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Trustees from time to time determine.

- (j) Insure against loss or damage by any cause whatsoever any insurable property to any amount not exceeding the full insurable value thereof or the full replacement value thereof as the Trustees may in their absolute discretion from time to time think fit.
- (k) Enter into contracts of any nature whatsoever for the purpose of protecting maintaining or enhancing the value of all or any assets acquired or held by the Trustees or which the Trustees have the right to acquire or hold.
- (l) Delegate any of the powers and duties to any committee or committees consisting of such of the Trustees (or such other persons) as they may appoint for such purpose.
- (m) Subject to the provisions of this Deed, to exercise as the Trustees in their absolute discretion think fit all the voting powers attaching to any Shares forming part of the Trust Fund including to consider any recommendations made by the directors of the Company on any proposal relating to any reconstruction or amalgamation or merger of the Company or any Subsidiary or any modification of the rights of shareholders or any increase or reduction of capital or other dealing with the Shares and after giving due consideration to the recommendations of the directors to make a decision in respect of any such proposal as the Trustees may consider in their absolute discretion will be for the benefit of or in the interests of the Trust Fund.
- (n) To appoint Directors in the manner provided by the Articles of Association of the Company provided however that the Trustees be satisfied that any person to be so appointed will be a person who has business acumen, sufficient time to devote to the affairs of the Company and the expertise to enable the Company to operate as a successful business.
- (o) To determine whether any money for the purposes of this Deed is to be considered as income or capital and what expenses ought to be paid out of income and capital respectively and also to apportion payments and every such determination or apportionment shall be final and binding on all persons beneficially interested in the Trust Fund and income thereof.
- (p) To determine all questions and matters of doubt which may arise in the course of the trusteeship of this Trust.
- (q) Do such other acts and things as the Trustees may in their absolute discretion consider incidental or conducive to the attainment of the general purposes of the Trust.
- (r) Effect insurance for a Trustee in respect of:
  - (i) liability, not being criminal liability, for any act or omission in his or her capacity as a trustee of the Trust;
  - (ii) costs incurred by that Trustee in defending or settling any claim or proceedings relating to any such liability; and

- (iii) costs incurred by that Trustee in defending any criminal proceedings in which he or she is acquitted.

In this clause the expressions:

"Trustee" includes a former trustee; and

"Effect insurance" includes paying, whether directly or indirectly, the costs of such insurance.

**SCHEDULE III  
CONSUMER CONSULTATIVE PROCEDURE**

In respect of any provision of this Deed which requires the Trustees to implement a Consumer Consultative Procedure, the Trustees shall:

- (a) Place notice of the proposal before a meeting of the Trustees;
- (b) Give notice of the proposal to Consumers in accordance with clause 11 of the Deed;
- (c) In every notice given under paragraph (b) of this schedule, specify a period within which Consumers interested in the proposal may make submissions on the proposal to the Trustees;
- (d) Ensure that any Consumer who makes written submissions on the proposal within the period specified in the notice given under paragraph (b) of this schedule is given a reasonable opportunity to be heard by the Trustees;
- (e) Ensure that every meeting at which submissions are heard are open to Consumers; and
- (f) Make all written submissions on the proposal available to Consumers.

The period specified pursuant to paragraph (c) above shall be not less than one month and no more than three months.



## TAB 3



## **ESTABLISHMENT PLAN**

This Establishment Plan has been compiled by The Tauranga Electric Power Board (Board) in consultation with the Interim Trustees and the draft Establishment Plan from which it is derived has been subject to the public consultation process pursuant to the Energy Companies Act 1992 ('Act').

The Interim Trustees recommend adoption of this Establishment Plan and have unanimously endorsed the Share Allocation Plan included in it.

The Members of the Board were appointed by the Government in October 1990 for their professional qualifications and business experience.

The Interim Trustees are the previously elected Board Members of the Board.

The Act requires electricity supply authorities to produce a plan to transfer their undertakings into companies incorporated under the Companies Act 1955.

The present Board Members are:

Mr A L Carpenter (Chairman)  
Mr F N McMaster (Deputy Chairman)  
Mr K C Collings  
Mr P E Key  
Mr J R McD Rayner

The Interim Trustees are:

Mr N F Pope (Chairman)  
Mr B W B Jensen (Deputy Chairman)  
Mrs S M Crowley  
Mr I F Foote  
Mr N H Johnson  
Mr N F Mayo  
Mr E McG Murray  
Mr L A Wahren  
Mr R G Wallingford



## MAIN POINTS OF THE PLAN

### TrustPower Limited

- \* The Board proposes to form a new company, TrustPower Limited (TrustPower or Company). This company will have net assets in excess of \$60 million, at book value, and will issue approximately 84 million shares having an asset backing (based on estimated book values as at 31 March 1993) of approximately 71 cents each and having a par value of 50 cents each.
- \* The Board owns the shares in an existing registered company containing the name TrustPower. It is proposed that this existing company will be renamed to enable the formation of a new company under the name of TrustPower Limited.
- \* The proposed memorandum and articles of association for TrustPower Limited are annexed as Attachment 1 to this section of the submission.
- \* The Directors of the Company will be the present members of the Board as named on the preceding page, together with one additional Director to be appointed by the Trustees of the Tauranga Power Trust.
- \* The proposed date of incorporation of the Company is forthwith after approval by the Minister of the Establishment Plan, but in any event no later than 1 April 1993 or such later date as may be allowed pursuant to section 32 of the Energy Companies Act 1992.

### Basis of Share Allocation to Consumers

- \* The Board's consumers will be allocated at no cost approximately 48.8% of the shares of TrustPower on the basis of consumption of electricity during the previous 12 months as follows:

1,000 shares for annual consumption of	Up to	50,000kWh
2,000 shares for annual consumption of	50,001-	250,000kWh
3,000 shares for annual consumption of	250,001-	500,000kWh
4,000 shares for annual consumption of	500,001-	1,000,000kWh
5,000 shares for annual consumption of more than		1,000,000kWh
- \* In short, the above will result in each account holder of each separately metered eligible point of supply receiving not less than 1,000 shares. The following points should be noted with respect to the basis for share allocation:

- \* The entitlement of account holders will be calculated on a date (Calculation Date) which shall be not more than one month before the date specified by Order in Council as the date for issue of the shares of the Company (Vesting Date). A very approximate estimate of these dates is that the Calculation Date will be at the end of March 1993 and the Vesting Date one month later. These dates may well be considerably delayed depending on the review and consent procedures of the Minister and the Ministry of Commerce.
- \* To be eligible to receive shares, a consumer must be named as the account holder in respect of an Eligible Supply Point on the Calculation Date and must also have been named as an account holder in respect of an Eligible Supply Point for a period (whether continuous or not) of not less than three months during the period of 12 months prior to the Calculation Date.
- \* An Eligible Supply Point means a supply point through which an amount of electricity of not less than 1,000kWh has been supplied during the period of 12 months prior to the Calculation Date. 1,000kWh equates to approximately \$100 of electricity purchases.
- \* Consumers will not be given the option of receiving cash in lieu of shares in TrustPower.
- \* Eligible Account Holders may nominate the persons to whom the shares to which the Eligible Account Holder is entitled should be issued.

#### **Share Allocation Audit Trust**

- \* 200,000 shares will be allocated to a Share Allocation Audit Trust which will be responsible for receiving and resolving complaints relating to the allocation of shares to account holders. The Trustees of this Trust will also address any anomalies as to the proposed allocation of shares which are identified prior to the Vesting Date.

#### **Employees**

- \* 300 shares will be allocated at no cost directly to each eligible employee of the Company.
- \* Approximately 1% of the shares will be allocated to an Employee Share Purchase Plan as a means of encouraging staff performance.

### **Tauranga Power Trust**

- \* 50% of the shares will be allocated to the Tauranga Power Trust and the following points are noted in respect of that Trust:
  - \* The Trust will be a Consumer Trust to provide benefits for the consumers.
  - \* The income and the capital of the Trust are to be used to provide benefits to the consumers.
  - \* The Trust is not a charitable trust and accordingly may not continue for more than 80 years. On the winding up of the Trust, the assets of the Trust which remain will be distributed for the benefit of consumers.
  - \* The Interim Trustees will be the first Trustees of the Trust. The number of Trustees will reduce from the present nine to six in 1994 and at that time and every two years thereafter three of the Trustees will retire and the consumers will elect three Trustees. Retiring Trustees will be eligible for nomination for re-election.
  - \* The remuneration of the Trustees is provided for under the Trust Deed which establishes the Trust. It provides that the Trustees shall be entitled to such remuneration as may be reasonable having regard to their duties and responsibilities as Trustees, but such remuneration is not to exceed the maximum meeting allowance payable from time to time in accordance with Part IVc of the Local Government Act 1974 to members of community boards with a community population exceeding 50,000 and otherwise to be subject to the same conditions that are imposed pursuant to Part IVc of the Local Government Act 1974 in respect of the payment of meeting allowances to such members of community boards.

### **Relationship of the Trust and the Company**

- \* The Tauranga Power Trust will be allocated 50% of the initial shares allocated (approximately 42 million shares).
- \* The shares will be allocated upon the following terms and conditions (which are embodied in the Articles of Association of the Company and in the Deed of Trust):
  - \* The Trustees may not dispose of any of their shares without:

- (a) the Trustees having first undertaken a consumer consultative procedure (as set out in the Deed of Trust) with respect to that proposed sale; and
  - (b) the Company approving the proposed purchaser.
- \* The Trustees will not vote their shareholding so as to oppose:
- (a) a cash issue pro rata to all existing shareholders; or
  - (b) a share placement to a person or associated person of that person where the Directors believe that the person will provide either a source of capital or expertise to the Company, or will otherwise act as a long term, stable, shareholder.
- \* On any resolution proposed at any meeting of shareholders of the Company, the Trustees will only exercise such number of votes as is equal to the number of votes cast by all other shareholders on that resolution.
- \* The Trustees shall be entitled to appoint such proportion of the maximum number of Directors of the Company in accordance with their level of shareholding in the Company, as set out below:

<u>Percentage of the Issued Share Capital of the Company Held by the Trustees</u>	<u>Proportion of the Number of Directors the Trustees May Appoint</u> <small>(Rounded to the nearest whole number)</small>
Equal to or greater than 45%	50%
Equal to or greater than 30% but less than 45%	33-1/3%
Greater than 15% but less than 30%	20%
15% or less the Trust reverts to normal shareholder voting rights.	

### Tradeability of Shares

- \* No shareholder of the Company may sell or transfer any interest in any shares to any person at any time prior to the earlier of:
- (a) the date 12 months after the vesting date, or
  - (b) the date the shares are quoted on a Stock Exchange.

Notwithstanding the above, shares may be transferred by a member to a consumer of the Company to be held beneficially by that consumer, and

may also be transferred by a member to any relative. In addition shares may be transmitted to personal representatives in the event of any member becoming mentally disordered, deceased or bankrupt.

### 20% Cap on Shareholding

- \* The draft Articles of Association of the Company (attached as Attachment 1) provide that no person (other than the Tauranga Power Trust) may have a relevant interest (as defined in the Articles) in more than 20% of the issued capital of the Company. The 20% figure is determined by including any interest held by any related or associated person of that person.
- \* This restriction will not apply, however, should the Company issue shares to any person so as to merge with, take over, or acquire the electricity undertaking of, another power company. This exemption will permit the Company to issue shares to a single person (or group of related or associated persons) in excess of the 20% limit so as to facilitate the merger with or acquisition of another power company or its electricity undertaking.
- \* The 20% limitation set out in the Articles can be waived in any specific instance or can be removed in its entirety by a special resolution of shareholders (that is, a resolution passed by 75% of the votes cast on that resolution).

### Sale of Main Undertaking

- \* The draft Articles of Association of the Company provide that the Directors shall not sell, exchange or otherwise dispose of (otherwise than by way of charge) the main undertaking of the Company either absolutely or conditionally without the sanction of the Company in general meeting.

### Listing on Stock Exchange

- \* It is the Board's intention to seek listing of the Company's shares on a registered Stock Exchange in New Zealand. This will be subject to the acceptability to the Company of any requirement of such Stock Exchange for listing. It should be noted, for example, that the proposed shareholding limit of 20% may not be acceptable to the New Zealand Stock Exchange. Should this be the case and the Directors believe it is appropriate for the Company to seek listing on that Stock Exchange the restriction will only be removed if shareholders vote by way of a special resolution to remove that restriction.
- \* It should be noted that listing may be available on the New Zealand Futures & Options Exchange.

### **Equity & Debt Securities**

- \* There are no plans for the issue by the Company of any equity securities (other than voting equity securities pursuant to the Share Allocation Plan) or debt securities to any person consequent upon the vesting in the Company of the energy undertaking of the Board. The debt securities of the Board will be assumed by the Company pursuant to sections 47 and 50 of the Act.
- \* No new debt securities will be offered prior to or as part of the corporatisation process.
- \* The two major debt security holders, the Bank of New Zealand and the National Bank of New Zealand Limited have both been notified of the impending change and invited to comment. No comment has been received from either Bank.

### **Time for Vesting of Undertaking**

- \* The Board proposes that its undertaking be vested in the Company within a period of one month after the date of the Order in Council made pursuant to section 47 of the Act.

## SHARE ALLOCATION PLAN

It is intended that the Company will issue approximately 84 million shares. The asset backing based on book values as at 31 March 1992 is 69 cents per share. The par value of each share will be 50 cents. Shares will be allocated in the manner set out below. Definitions of Terms used in the Plan are set out on page 12.

### Account Holders

Approximately 48.8% of the shares will be allocated to Eligible Account Holders as recorded by the Board at 4.00 p.m. on the Calculation Date or to nominees of such Eligible Account Holders. Eligible Account Holders (or their nominees) will be entitled free of charge to the Specified Number of Shares.

The Board will, prior to the Vesting Date, ensure that the Eligible Account Holders will be given the opportunity of specifying the name or names of the persons in whom the shares are to be vested. Shares may be vested in one or more persons jointly or the number of shares to be vested may be divided up amongst named persons provided that each parcel of shares shall be not less than 200 shares.

### Tauranga Power Trust

The Tauranga Power Trust will be allocated 50% of the initial shares allocated (approximately 42 million shares).

The shares will be allocated upon the following terms and conditions (which will be embodied in the Deed of Trust and in the Articles of Association of the Company):

- \* The Trustees may not dispose of any of their shares without:
  - (a) the Trustees having first undertaken a consumer consultative procedure (as set out in the Deed of Trust) with respect to that proposed sale; and
  - (b) the Company approving the proposed purchaser.
- \* The Trustees will not vote their shareholding so as to oppose:
  - (a) a cash issue pro rata to all existing shareholders; or
  - (b) a share placement to a person or associated person of that person where the Directors believe that the person will provide either a source of capital or expertise to the Company, or will otherwise act as a long term, stable, shareholder.

- \* On any resolution proposed at any meeting of shareholders of the Company, the Trustees will only exercise such number of votes as is equal to the number of votes cast by all other shareholders on that resolution.
- \* The Trustees shall be entitled to appoint such proportion of the maximum number of Directors of the Company in accordance with their level of shareholding in the Company, as set out below:

<u>Percentage of the Issued Share Capital of the Company Held by the Trustees</u>	<u>Proportion of the Number of Directors the Trustees May Appoint</u> <small>(Rounded to the nearest whole number)</small>
Equal to or greater than 45%	50%
Equal to or greater than 30% but less than 45%	33-1/3%
Greater than 15% but less than 30%	20%
15% or less the Trust reverts to ordinary shareholder voting rights.	

A draft copy of the Trust Deed is attached as Attachment 2.

**Other**

A total of 1,000,000 of the shares will be allocated between:

- (a) a Share Allocation Audit Trust (as to 200,000 shares);
- (b) directly to the Eligible Employees of the Company (as to 300 shares each); and
- (c) to an Employee Share Ownership Plan (as to the balance of these shares).

Upon completion of the activities of the Share Allocation Audit Trust the balance of the shares of this Trust (if any) would be distributed to the Employee Share Ownership Plan to be held pursuant to the terms of that Plan.

(a) **Share Allocation Audit Trust**

200,000 shares will be allocated to a Share Allocation Audit Trust. The Allocation Trustees will have the responsibility of receiving and resolving complaints relating to the allocation of shares to the account holders.

Prior to the Vesting Date the Allocation Trustees will have the right to recommend to the Directors of the Company that the Directors alter the list of account holders who will be allocated shares, so as to address any



anomalies as to the proposed allocation of shares which are identified prior to the Vesting Date. Subsequent to the Vesting Date the Allocation Trustees will be empowered, under the Trust, to distribute shares at their discretion to address such anomalies. An example of an anomaly which the Allocation Trustees may address is where a person is named as an account holder on the Calculation Date and has been residing at the premises supplied through an Eligible Supply Point for not less than three months during the period of 12 months prior to the Calculation Date, but has not been named as the account holder for the three month period. Such a person will not be entitled to be allocated shares as an Eligible Account Holder but the Allocation Trustees may elect that such person should receive shares if they have been responsible for paying for electricity consumed notwithstanding that they have not been named as the account holder for that period of time.

Any shares left over will be distributed to the Employee Share Ownership Plan discussed below.

The Allocation Trustees will be the General Manager of the Company and three persons from the Western Bay area who are independent, of good repute and with commercial experience, to be selected by the Board and the Interim Trustees.

A draft copy of the Share Allocation Audit Trust is attached as Attachment 3.

(b) **Employees**

Each Eligible Employee of the Company will be allocated 300 shares free of charge pursuant to the Order in Council. The total of such shares allocated will be approximately 45,000 shares.

(c) **Employee Share Ownership Plan**

The Trustees of an Employee Share Ownership Plan will be allocated the balance of the 1,000,000 initial shares referred to above, to be held pursuant to the terms of that Plan. The Plan Trustees will have power to allocate these shares to employees of the Company so as to act as an incentive for them. Allocations will be at a price to be determined by the Plan Trustees from time to time, with all employees being entitled to participate upon the same terms both as to number of shares and price.

The Company will not fund the Employee Share Ownership Plan nor any purchases of shares in the capital of the Company made by the Plan Trustees.

The Plan Trustees will be the General Manager of the Company, an employee elected by the employees of the Company, and one of the Directors of the Company.

A draft of the Employee Share Ownership Plan is attached as Attachment 4.

## DEFINITIONS

For the purposes of the Share Allocation Plan the following terms shall have the following meanings (unless the context otherwise requires);

"Act" means the Energy Companies Act 1992 as amended from time to time;

"Allocation Trustees" means the Trustees of the Share Allocation Audit Trust;

"Board" means The Tauranga Electric Power Board;

"Calculation Date" means such date as the Board shall determine to be the calculation date being a date not more than one month before the Vesting Date, such calculation date to be publicly advertised by the Board not less than five business days before the Calculation Date;

"Company" means the Board's successor company in whom the Board's undertaking is to be vested pursuant to an Order in Council made pursuant to section 47 of the Energy Companies Act 1992;

"Eligible Account Holder" means a person who:

- (a) is named on the Calculation Date as the account holder with the Board in respect of an Eligible Supply Point; and
- (b) was named as an account holder with the Board in respect of an Eligible Supply Point for a period (whether continuous or not and whether or not the same Eligible Supply Point) of not less than three months during the period of 12 months prior to the Calculation Date;

"Eligible Supply Point" means a supply point which is separately metered and separately accounted for through which an amount of electricity of not less than 1,000 kWh has been supplied during the period of 12 months prior to the Calculation Date, or, in the case of a new supply point connected to the Board's electricity network during such period, a proportion of such amount of electricity calculated by reference to the number of days in such period during which the supply point was connected;

"Eligible Employee" means an employee who is contracted to work not less than 30 hours per week on a permanent basis and who at the date of the relevant issue or allocation of shares has completed six months service;

"Interim Trustees" means the Interim Trustees of the Board pursuant to the Act;

"Order in Council" means the Order in Council in relation to the Board and the Company pursuant to sections 47 and 48 of the Act;

"Plan Trustees" means the Trustees of the Employee Share Ownership Plan;

"Share Recipients" means the persons in whom shares in the Company are vested pursuant to the Order in Council;

"Specified Number of Shares" means the number of shares to which each Eligible Account Holder will be entitled based on consumption of electricity through each relevant Eligible Supply Point in the name of that Holder on the Calculation Date, being consumption during that part of the period of 12 months prior to the Calculation Date during which such Eligible Supply Point was in the name of that Holder, in accordance with the following table:

<u>Number of Shares for Each Eligible Supply Point</u>	<u>Consumption through Each Eligible Supply Point</u> (As set out above)
1,000	Up to 50,000 kWh
2,000	50,001 - 250,000 kWh
3,000	250,001 - 500,000 kWh
4,000	500,001 - 1,000,000 kWh
5,000	More than 1,000,000 kWh

"Vesting Date" means the date specified in the Order in Council pursuant to sections 47 and 48 of the Energy Companies Act, under which shares in the Company are issued to Share Recipients.

References to the singular include the plural, references to one gender include the others, and references to a person include a company, corporation, firm, trust, central or local government authority or department, and any other group association or entity whether corporate or not.





## REPORT OF THE AUDIT OFFICE

### TO THE READERS OF THE FINANCIAL STATEMENTS OF THE TAURANGA ELECTRIC POWER BOARD

The Audit Office having been appointed in terms of section 75 of the Electric Power Boards Act 1925, has audited the financial statements of the Tauranga Electric Power Board.

We conducted our audit in accordance with generally accepted auditing standards and practices, with the objective of obtaining reasonable assurance that the financial statements are free from significant errors or omissions. In our audit we reviewed the evidence to support the amounts and disclosures in the statements. We also assessed the accounting practices used.

In our opinion, the financial statements of the Tauranga Electric Power Board fairly reflect:

- \* The financial results and cashflows for the year ended 31 March 1992;  
and
- \* The financial position as at 31 March 1992.

  
L B Kemble

for Controller and Auditor-General

12 October 1992

**TAURANGA ELECTRIC POWER BOARD**

**INCOME & EXPENDITURE ACCOUNT**

**For Year Ended 31 March 1992**

	<u>1992</u>	<u>1991</u>
	\$	\$
<b>INCOME</b>		
Sales of Electricity	40 772 226	38 956 442
Cash Discounts Allowed	(1 276 489)	(1 373 409)
RERC Subsidy	100 898	21 035
Interest & Sundries	612 259	659 140
Net Profit/(Loss) from PACC	126 759	(113 315)
Capital Gain on Disposal of Assets	88 847	166 380
	-----	-----
	<b>\$40 424 500</b>	<b>\$38 316 273</b>
	=====	=====
<b>EXPENDITURE</b>		
Electricity Purchases	25 704 610	23 474 414
Maintenance & Operation : Distribution System	5 467 974	6 711 493
Administration Costs & General Expenses	3 196 822	3 117 314
RERC Levy	19 798	42 752
Interest on Loans	363 823	369 799
Depreciation	2 582 132	2 454 417
Abnormal Items	1 120 052	0
	-----	-----
<b>Total Expenditure</b>	<b>\$38 455 211</b>	<b>\$36 170 189</b>
	=====	=====
Net Profit/(Loss) before Taxation	1 969 289	2 146 084
Less Taxation Expense	1 241 880	621 564
	-----	-----
<b>Profit/(Loss) transferred to Appropriation Account</b>	<b>\$ 727 409</b>	<b>\$1 524 520</b>
	=====	=====

**TAURANGA ELECTRIC POWER BOARD  
BALANCE SHEET  
As At 31 March 1992**

	<u>1992</u> \$	<u>1991</u> \$
<b>ASSETS</b>		
Current Assets		
Cash at Bank - Power Fund Account	0	68 030
- Power Fund Investments	7 095 000	5 420 000
Accounts Receivable	5 758 646	6 557 173
Work in Progress	74 007	101 172
Inventories General	1 283 373	1 680 391
	-----	-----
<b>Total Current Assets</b>	<b>\$14 211 026</b>	<b>\$13 826 766</b>
	-----	-----
<b>INVESTMENTS</b>		
Staff Housing Loans	10 701	35 584
Power Authorities Computer Consortium	169 770	43 011
Ownership of Kaimai Hydropower	28 703 614	28 703 614
	-----	-----
<b>Total Investments</b>	<b>\$28 884 085</b>	<b>\$28 782 209</b>
	-----	-----
<b>DEFERRED INCOME TAX BENEFIT</b>	<b>21 402</b>	<b>0</b>
	-----	-----
<b>FIXED ASSETS</b>	<b>\$39 815 659</b>	<b>\$38 807 357</b>
	-----	-----
<b>TOTAL ASSETS</b>	<b>\$82 932 172</b>	<b>\$81 416 332</b>
	=====	=====
<b>LIABILITIES</b>		
Current Liabilities		
Cash at Bank - Power Fund Account	896 397	0
Accounts Payable	5 022 357	6 063 159
Taxation Liability	137 906	(843 160)
Current Portion of Term Loans	3 225 190	8 048 230
	-----	-----
<b>Total Current Liabilities</b>	<b>\$9 281 850</b>	<b>\$13 268 229</b>
	=====	=====
Term Liabilities		
Generation Loans	15 500 000	9 075 000
Reticulation Loans	375 000	2 025 190
	-----	-----
<b>Total Term Liabilities</b>	<b>\$15 875 000</b>	<b>\$11 100 190</b>
	=====	=====
<b>TOTAL LIABILITIES</b>	<b>\$25 156 850</b>	<b>\$24 368 419</b>
	=====	=====
<b>CORPORATE OWNERSHIP:</b>		
Capital Reserve	37 790 469	36 733 937
Revenue Reserve	11 809 085	11 707 209
Appropriation Account	8 175 768	8 606 767
	-----	-----
<b>NET WORTH</b>	<b>\$57 775 322</b>	<b>\$57 047 913</b>
	-----	-----
<b>TOTAL LIABILITIES &amp; NET WORTH</b>	<b>\$82 932 172</b>	<b>\$81 416 332</b>
	=====	=====

**K C Collings  
CHAIRMAN**



**VALUATION  
OF THE  
TAURANGA ELECTRIC POWER BOARD UNDERTAKING**

**Book Value - 31 March 1992**

The current book value is based on the audited Statement of Accounts of the Tauranga Electric Power Board as at 31 March 1992. Since that date there have been no material adverse events in relation to the undertaking.

**The Balance Sheet summarised as at 31 March 1992 is:**

Current Assets	\$14,232,428
Investments including Kaimai Hydropower	\$28,884,085
Fixed Assets	\$39,815,659
Total Assets	\$82,932,172
Current Liabilities	\$9,281,850
Loan Liabilities	\$15,875,000
Total Liabilities	\$25,156,850
Net Corporate Worth	\$57,775,322

**IDENTIFICATION OF THE TAURANGA ELECTRIC POWER  
BOARD UNDERTAKING**

**THE TAURANGA ELECTRIC POWER BOARD AREA OF SUPPLY**

The right to distribute and supply electricity is granted by The Tauranga Electric Power Board Supply Licence 1985 within the area contained therein.

**THE TAURANGA ELECTRIC POWER BOARD ELECTRICITY ASSETS**

**Network**                      The Board's electricity distribution network at 31/3/92 comprised:

1755km	of overhead lines
740km	of underground cables
4269	distribution transformers
317854kVA	of installed capacity
45503	metered installations

**Generation**                      The Board's interests and rights in the Tauranga Joint Generation Committee as defined by the Deed between The Tauranga Electric Power Board and Tauranga District Council dated 17 November 1965, including the right to receive a distribution of electricity generated by the Scheme, and an interest as tenant in common in equal shares in the land, buildings, lines, licences and other property comprising the Scheme.

**Network Land & Buildings**                      Owned at 31/3/92

**A) Substation Sites (developed and undeveloped)**

Aongatete	Pt Lot 34 B1 Aongatete
Greerton	Sec 44, 45 Blk III Te Tumu SD
Kauri Point	All 186 S.O. 53990
Matapihi	Pt DP 2602
Matua	Lot 2 DP 14434
Omokoroa	All 380 Te Puna Blk 8
Otumoetai	Lot 2 DPS 13002
Papamoa	Gaz 70 P2479 Lot 3
Pongakawa	Lot 1 DPS 12556 Blk II Waihi South SD
Te Puke	DP 27157
Triton Avenue	Lot 48, DP 18318
Welcome Bay	Pt Kaitemako B Blk XIV Tauranga SD

(B) **Depots**  
Katikati Lot 3 DP 55313  
Te Maunga Pt 2, Sec 9A, Papamoa DP 3222

(C) **Board Head Office**  
Tauranga Pt Lot 1 DPS 3680 Lot 1 DPS 6528  
Pt Lot 96 of Sec 1 Tauranga Town  
Lot 1 DPS 5516 Lot 95 of Sec 1  
Pt Allot 72 DP 10669

(D) **Board Residential Properties**  
Te Maunga - 2 houses Pt 2 Sec 9A Papamoa DP 3222  
Te Puke - 2 houses DP 27157

Leased as at 31/3/92

Tauranga Substation, Cameron Road, Tauranga;  
Bayfair Office, Bayfair Shopping Complex, Mt Maunganui;  
Te Puke Office, Palmer Court, Te Puke;  
Sulphur Point Depot Lot 1, 2, 4DP 12876

**Vehicle Fleet** As at 31 March 1992, the Board's vehicle fleet consisted of:

51 cars, vans and utility vehicles  
17 trucks  
It also owns sundry mobile plant.

**Various** In addition the Board owns workshop equipment, communications and load control equipment, office equipment and computers.

**Intellectual Property** The Board holds no intellectual property.

**Contracts** All contracts for the supply of electricity between the Board and its consumers are to vest in TrustPower.

**Term  
Liability**

The following loans were outstanding at 31/3/92

	Date of Loan	Amount	Maturity
Electrical Extension Loan	1987	\$1,575,000	1/4/92
Electrical Extension Loan	1980	\$53,380	1/7/92
Electrical Loan	1980	\$21,810	1/1/93
Electrical Extension Loan	1980	\$75,000	1/7/94
Electrical Extension Loan	1976	\$300,000	1/5/98
Ruahihi Redemption Loan	1987	\$1,500,000	1/4/92
Redemption Loan	1987	\$1,875,000	1/4/92
Ruahihi Redemption Loan	1987	\$1,000,000	1/5/92
Ruahihi Redemption Loan	1987	\$1,000,000	1/7/92
Lower Mangapapa Hydro Renewal Loan	1988	\$1,200,000	1/8/92
Ruahihi Redemption Loan	1987	\$2,500,000	15/3/94
Generation Redemption Loan	1992	\$8,000,000	24/2/95
Total		\$19,100,190	

**Contingent  
Liabilities**

No significant contingent liabilities existed at 31/3/92.

**Human  
Resources**

At 31/3/92 the following staff were employed by the Board:

Management, Administration & Clerical	68
Operations, Maintenance & Construction	69
	----
	137
	===

**THE TAURANGA ELECTRIC POWER BOARD  
AREA OF SUPPLY**

All that area in the South Auckland Land District bounded by a line commencing at a point on the sea coast in line with the western boundary of part Lot 1 DPS 19141 in Block VII Waihi South S.D. and proceeding southerly along a right line to and along the aforementioned boundary to the southwestern corner of said part Lot 1; thence southerly along a right line to the northernmost point of part Tahunaroa 3A Block; thence along the eastern boundary of said 3A Block to the northeastern corner of part Section 6 Block VI Waihi South S.D.; thence southerly along a right line in the direction of the northwestern corner of part Section 15 Block XI, Rotoma S.D. to a point due east of northwestern corner of part Section 1A Block X Waihi South S.D.; thence westerly to the aforementioned northwestern corner and along the western boundary of said part Section 1A, the northwestern boundary of Section 1A Block II Rotoma S.D. and the western boundaries of Sections 2, 3, 4 and 5 Block II Rotoma S.D. to the northwestern corner of Section 6 Block VI Rotoma S.D.; thence westerly along the southern boundary of Block II Rotoma S.D. and that boundary produced across two public roads, Lots 9, 8 and 5 and 1A to the southern boundary of Block I Rotoma S.D.; thence along the southern boundary of said Block I, the eastern boundary of Block IV Rotoiti S.D. and the northern boundaries of Rotoiti 5B1 Block, Tokerau A4 Block, crossing the intervening Kaikokopu Road and Tokerau A1 to Maniatutu Road; thence along a right line across said road to and along the northern boundaries of Tokerau A1B Block, Rotoiti 3V2A Block, the northern end of Lichensteins Road and the northern boundary of part Rotoiti 3V Block and the last mentioned boundary produced to the middle of the Pokopoko Stream; thence northerly along the middle of that stream to a point in line with the northern boundary of part Waipapa 1D Block; thence westerly to and along that boundary and that boundary produced to the middle of State Highway No 33; thence northerly along the middle of said highway to a point in line with the northeastern boundary of part Okere 1E Block; thence northwesterly to and along that boundary and that boundary produced to the middle of the Kaituna River; thence northerly along the middle of that river to a point in line with the northern boundary of Ngatipahiko BIB Block; thence westerly to and along that boundary and the northern boundaries of Blocks II and I Rotoiti S.D. to the middle of the Mangaorewa River; thence generally westerly along the middle of that river and the Ohaupara Stream to a point in line with the northwestern boundary of Section 13 Block III Rotorua S.D. thence southwestwardly to and along that boundary to and along the southwestern boundary of Section 3 Block II Rotorua S.D. to its intersection with a right line between the westernmost corner of Lot 1 DPS 9825 in Block V Horohoro S.D. and Trig Station 27 (Puwhenua) Block VII Tapapa East S.D.; thence northeasterly along said right line to said Trig Station 27; thence northwesterly along a right line to Trig Station 146 (Te Weraiti) Block IV Opoutihi S.D. and northeasterly along another right line to Trig Station 909 (Waiuananu) Block II Opoutihi S.D.; thence northwesterly along the

southwestern boundary of Whakamarama No 2 Block to and along the southeastern and eastern boundaries of Maurihoro A Block, the western boundaries of Blocks VII, IV and I Aongatete S.D. the eastern side of a public road and the eastern boundary of Lot 5 DP 25781 to the northern most point of the aforementioned northeastern boundary; thence northwesterly along a right line to the northeastern corner of part Section 79 Block XII Aroha S.D. and the production northwesterly of the said right line to the northwestern boundary of the Katikati Survey District; thence westerly along the said northwestern boundary to Trig Station Te Aroha No 2; thence northeasterly along a right line to the westernmost corner of Section 3 Block VII Aroha S.D.; thence along the southwestern boundaries of said Section 3, Lot 1 DPS 15504 and Section 1 Block XII Katikati S.D. and the southwestern boundary of Section 36 Block IV Katikati S.D. and that boundary produced to the western boundary of Lot 1 DP 23590; thence along the western and northern boundaries of said Lot 1 to a public road; thence along a right line across said road to and along the northern boundaries of Lots 2 and part 3 DP 23590 and Lot 1 DP 30035 the eastern boundaries of Section 27 Block IV Katikati S.D. and Section 2 Block XII Katikati S.D. and the northwestern boundary of Section 12 Block I Katikati S.D. to the southwestern side of State Highway No 2; thence northwesterly along that side to a point in line with the northwestern boundary of Section 3 Block I Katikati North S.D.; thence northeasterly to and along that boundary to and along the southwestern and northwestern boundaries of Lot 1 DP 32351 the northwestern boundaries of Ohinemuri part 17A2B and 17A2A1 Blocks and part Section 8 Block I Katikati North S.D. and the southwestern and northern boundaries of Lot 1 DP 22631 and the last mentioned boundary produced to the sea coast thence southeasterly along the sea coast, crossing the mouths of all harbours and rivers to the point of commencement.

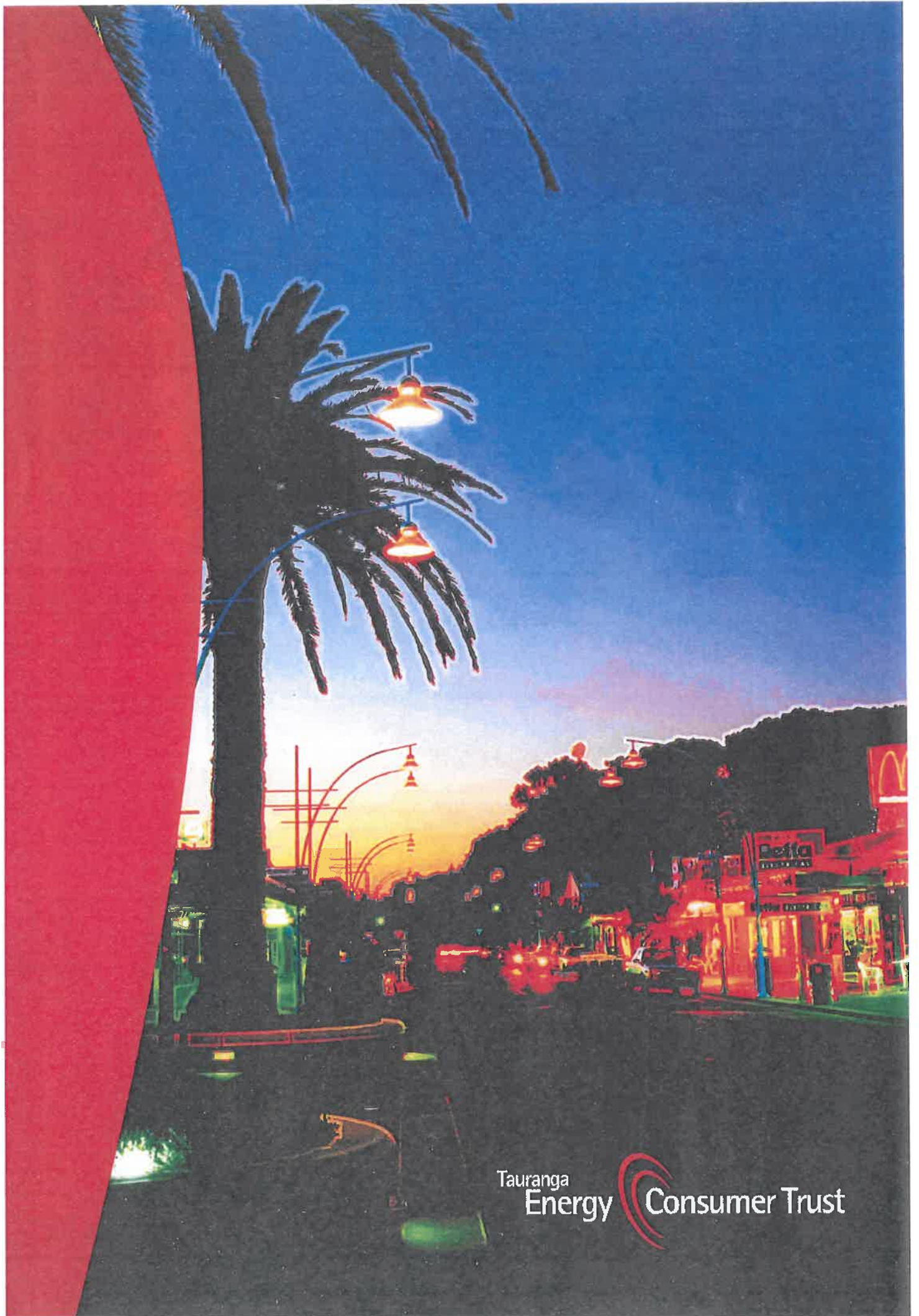
Excluding therein the area of supply of the Tauranga City Council as described in the schedule to the Councils Electric Supply Licence in NZ Gazette dated 21 March 1985 No 47 Page 1242.



## TAB 4







Tauranga  
Energy Consumer Trust

# **Tauranga Energy Consumer Trust**

## **Directory**

<b>Trustees:</b>	<b>J F Beange Chairperson B W Cronin Deputy Chairperson  M H Cameron B W B Jensen K J Jones R G Wallingford</b>
<b>Secretary:</b>	<b>P W Simmonds, Simmonds &amp; Associates Chartered Accountants 12 Elizabeth Street (PO Box 800) Tauranga</b>
<b>Auditors:</b>	<b>KPMG Tauranga</b>
<b>Solicitors:</b>	<b>Holland Beckett Maltby Tauranga Chapman, Tripp, Sheffield Young Auckland</b>
<b>Financial Advisors:</b>	<b>Austin Hill &amp; Company Ltd Auckland</b>
<b>Bankers:</b>	<b>Westpac Trust Tauranga</b>
<b>Date of Commencement:</b>	<b>21 December 1993</b>

# Chairperson's Report

It is with pleasure that I present to the Trust's Consumer beneficiaries the Annual Report and financial statements to 31 March 1998.

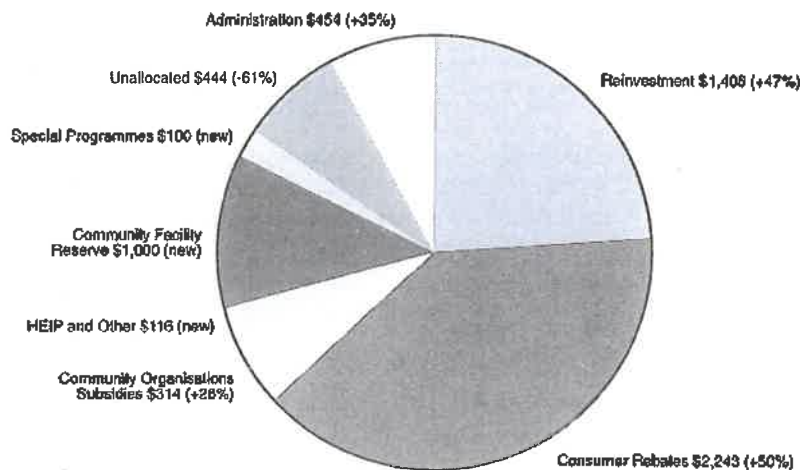
## ***INCOME, DISTRIBUTIONS AND INVESTMENT***

The financial performance of the Trust is very much linked to the fortunes of Trust Power Limited, both in terms of income and capital value.

Consequently, fuelled by strong performance and increased dividends from TrustPower the Trust experienced high income growth in the 1997/98 year up 47% to \$6.1m. The audited surplus for the year was also up 47% to \$5.6m.

Because TrustPower delivered high returns to shareholders we also were able to deliver healthy returns to our Consumer beneficiaries.

Income allocation in \$thousands is shown below with indications of % changes on the previous year.



**TOTAL INCOME: \$6,077,000**

The major reserve for community facilities will be allowed to build up before being allocated to bricks and mortar facilities in our district. Similarly the special programmes reserve will be allowed to build and will be spent in the 1999/2000 financial years.

New allocations to assist TrustPower, (HEIP & Other), with energy efficiency in the home and energy education in schools have been well received by Consumers.

We are currently working with our lawyers and TrustPower so as to guarantee our continuing ability to give Consumer beneficiary rebates following the split of Trust Power into separate line and generation/retail companies.

During the year the Trust used its investment reserves to acquire 2,225,000 shares in Infracol Ltd purchased for in excess of \$2.0m. Unfortunately this investment has since suffered at the hands of both the market generally and also the Electricity Industry Reform Act 1998.

## ***CORPORATE ACTIVITY***

The merger of TrustPower and Tauranga Electricity Limited resulted in a further dilution of the Trust's percentage shareholding in TrustPower, down from 50% in 1994, 28% in 1996 to 24.9% now. While this clearly represents a

reduction in the level of control available to the Trust it still represents "negative control" as the Trust can prevent the passing of any special resolutions that require a 75% majority of shareholders at a meeting.

The reduction in shareholding level has been offset by the significant increase in income and (until the current government reform of the electricity industry) a significant increase in capital value.

In November 1997 the Trust entered into a Shareholder's Agreement with Tauranga Civic Holdings Ltd ("TCHL") and Tauranga District Council. Among other things this confers a right of first refusal in favour of the Trust over TCHL's shareholding in TrustPower.

### ***CONSUMER CONSULTATION***

As we are required to do by our Trust Deed the Trust undertook a review of its holding in TrustPower and then consulted with our beneficiaries. Our recommendation, which we confirmed following Consumer Consultation, was to continue to hold the investment in TrustPower but to continue to review this position in light of any major industry changes that may occur and impact on the ongoing viability of the investment.

We also consulted with our Consumer beneficiaries regarding the potential to include the previous Tauranga Electricity Limited consumers as beneficiaries of the Trust. Our recommendation, which we subsequently confirmed following Consumer Consultation, was that we would include ex-TEL consumers following the receipt of fair and reasonable consideration for their inclusion from Tauranga District Council. To date the Council have refused to entertain the notion of consideration and so, sadly for the ex-TEL consumers, they remain unable to qualify for the benefits the Trust can provide.

### ***ELECTRICITY INDUSTRY REFORM***

The Electricity Industry Reform Act ("the Act") cuts across our property rights. It requires that Trust Power be split into two separately owned entities and further requires that the Trust sells part of what we own. Beginning with a campaign of visits to local Members of Parliament in February and including appearing at the Select Committee, the Trust was active in its opposition to aspects of the Act

We have also actively voiced concern and made submissions to government and the IRD over the potential tax consequences associated with the Act.

Unfortunately, it seems that our pleas and protestations have been ignored.

We are now, together with the other major shareholders and TrustPower, working to ensure that when TrustPower is split so as to comply with the Act, we achieve the most value enhancing outcome for all shareholders.

### ***CONCLUSION***

The Trustees have had a busy and demanding year.

By virtue of the size of our shareholding in TrustPower we manage our investment in a far more proactive manner than is the case for smaller shareholders. We continue to support the Company's innovative growth path and have been rewarded by strong performance in return.

We expect the level of activity to remain high as TrustPower restructures and adjusts to the new electricity industry environment.

We also anticipate a busy time ahead managing the allocation of income to our Consumer beneficiaries. We intend to become more proactive in delivering income directly to Consumers. We will also be looking to widen the use of the Trust Funds so that a portion of our income gives wider benefit to our community.

Jan Beange  
Chairperson  
28 August 1998

## Community Organisation Subsidies Approved During Year Ended 31 March 1998

Abundant Life Community Charitable Trust	Wiring of building and music equipment	\$13,700
Arataki Free Kindergarten	A cordless phone and microwave	\$250
Arataki Primary School Board of Trustees	Stove	\$600
Bay of Plenty Youth Alive	Computer	\$2,900
Bellevue Primary School Board of Trustees	Freezer, refrigerator, pie warmer and hall equipment	\$3,000.00
Bethlehem Marae	Ovens, washing machine, heaters, upgrading of mains and extractor fans	\$9,000
Bethlehem Pottery Club	An electric kiln	\$896
Bowentown Boating & Sports Fishing Inc	New mains, lighting, oven, dishwasher and microwave	\$9,500
Christian Youth Ministries	Computer and printer	\$1,520
Dave Hume Swimming Pool Trust	Swimming pool pump/chlorinator/refrigerator	\$2,500
Deo Gratias Trust	Beam central vacuum cleaner	\$1,100
Eastern Districts Rugby and Sports Club	Flood lighting and heating	\$5,500
Eleos Home Trust	Computer	\$1,362
Faith Bible College	Upgrading of reticulation system	\$1,000
Greenpark Primary School	Stove, dishwasher, fridge and freezer	\$1,250
Greerton Bible Chapel	Ovens, sound system, fire alarm, zip, laser boiler and waste disposal	\$15,500
Greerton Kindergarten	Photocopier	\$1,500
Greerton Scout Group	6 wall heaters	\$280.00
Gwen Rogers Free Kindergarten	Ceiling fans	\$200
Hosanna Christ Gospel Church	Computer, printer & photocopier, stove, fans & rewiring	\$1,000
Hungahungatoroa Marae	Commercial catering equipment	\$10,000
Judea Community Sports Club	Sportsfield lighting	\$3,800
Kaimai Outdoor Centre	Wiring of caretakers house, stove and hot water cylinder and reticulation	\$5,000
Katikati Free Kindergarten	Stove and photocopier	
Katikati Memorial Hall Inc.	Ventilation system and overhead projector	\$2,000
Katikati Assembly of God Property Trust	Fire alarm and public address systems	\$5000
Katikati College PTA	Illumination of netball courts	\$14,000
Maketu Surf Lifesaving Club Inc	Computer, printer and televideo	\$1,850
Maungatapu Kindergarten	Photocopier	\$1,800
Masonic Lodge Te Puke	Relocation of metre	\$420
Merivale Community Inc	Upgrade electrical equipment, range, microwave and fridge freezer	\$6,500
Mount Women's Bowling Club	Automatic boiler, heaters and microwave	\$920
Mount Papamoa Croquet Club	Stove	\$200
Ngamuwahine Camp Trust	Stove and a security alarm	\$2,000
Omokoroa Hall Committee Inc	Heating equipment	\$7,800
Omokoroa Playcentre	Security lights	\$135
Omokoroa Settlers Hall Committee	To upgrade lighting	\$2,000
Otawa Lodge Management Committee	Stove	\$600
Otawhitiwhi Te Kohanga Reo	Photocopier, television and video	\$2450

Otumoetai Amateur Swimming Club	Electronic starting equipment	\$600
Otumoetai Baptist Church	Dishwasher and electric range	\$5,600
Otumoetai Plunket	Photocopier	\$3,000
Otumoetai Plunket Childcare	Energo strip heating system	\$1,000
Otumoetai Primary School Cent. Hall Com.	Alarm system, sound system, white ware, thermal insulation and lighting	\$20,000
Otumoetai Tennis Club Inc	Court lighting	\$15,000
Paengaroa Free Kindergarten	A stereo and fax machine	\$500
Paengaroa Hall Committee Inc.	2 ovens	\$750
Paengaroa School	Install central heating	\$8,000
Papamoa Baptist Church	Electric piano	\$2,000
Papamoa Free Kindergarten	Stereo	\$350
Pillans Point Primary School	Electrical cost for erection of school hall	\$10,000
Pongakawa Playcentre	Vacuum Cleaner	\$200
Pongakawa School	Heated pool	\$9,000
Presbyterian Support Services	Upgrading carpark lighting	\$1,230
Pyes Pa Playcentre	Wet & dry vacuum cleaner	\$250
Rereatukahia Tribal Committee	Electrical wiring of sports club	\$12,000
Riding for the Disabled - Tauranga District Group	2 heaters	\$800
Shalom Kindergarten	Video and video camera	\$800
St John Resource Centre Inc.	Computer	\$1,500
St Stephens Methodist Church	Commercial dishwasher	\$3,050
Tamaphore Marae	Installing electricity in new offices	\$7,750
Taoist Tai Chi Society Inc.	Constant hot water system, fax and photocopier	\$750
Tauranga Public Service Childcare Soc Inc	Dishwasher, washing machine and computer	\$3,000
Tauranga South Baptist Church	Microphones, cassette, CD player, overhead projector and screen	\$3,000
Tauranga Wood Crafters Club	Tilting arbor saw	\$1,290
Tauriko Playcentre	Zip	\$350
Te Akau Kohanga Reo	Burglar alarm	\$565
Te Puke Contract Bridge Club	Double oven and range hood	\$840
Te Puke Golf Club Inc	Power fittings, computer networking, sound system and fluorescent lights	\$4,000
Te Puke High School	Floodlights, spotlights and wireless microphones	\$5,000
Te Puke Playcentre	Heaters	\$1,150
Te Puna Tennis Club	Court lighting	\$15,000
Wairoa Marae Committee	Oven, deep fryer, lights and hot food display unit	\$10,500
Waitaha Hei Marae	Upgrade power supplies	\$2,500
Waldorf Schools Trust	Photocopier and computer	\$3,000
Welcome Bay Free Kindergarten	Stove	\$625
Welcome Bay Tennis Club	TV and Video	\$600
Whakaue Kaipapa Marae	Electrical improvements to update dining area	\$15,000
YMCA Inc Tauranga	Computer, printer and scanner	\$2,000
Youth for Christ Tauranga Inc.	Big screen video projector	\$2,000
	<b>TOTAL</b>	<b>\$313,983</b>

**Tauranga Energy Consumer Trust**  
**Financial Statements**  
**For the Year Ended 31 March 1998**

<b>Table of Contents</b>	<b>Page No</b>
<b>Statement of Financial Performance</b>	<b>6</b>
<b>Statement of Movements in Trust Equity</b>	<b>6</b>
<b>Statement of Financial Position</b>	<b>7</b>
<b>Statement of Cashflows</b>	<b>8</b>
<b>Notes to the Financial Statements</b>	<b>9 - 11</b>
<b>Audit Report</b>	<b>12</b>



**Tauranga Energy Consumer Trust  
Statement of Financial Performance  
For The Year Ended 31 March 1998**

	Notes	1998	1997
<b>Income</b>			
Dividend TrustPower Limited		5,919,151	3,922,587
Interest - TrustBank BOP Limited		<u>157,520</u>	<u>198,740</u>
<b>TOTAL INCOME</b>		<b><u>\$ 6,076,671</u></b>	<b><u>\$4,121,327</u></b>
<b>Expenses</b>			
Audit Fee		2,500	2,800
Bank Fees & Sundry		3,403	1,755
Consumer Consultation, Research & Reporting		51,091	18,019
Election Costs		-	27,028
Electricity Rebate Administration Costs		11,776	-
Goods & Services Tax		45,690	23,931
Insurance		10,900	19,700
Community Grant Administration Costs		32,750	3,707
Legal and Advisory Fees		107,219	60,440
Secretarial Costs		70,619	48,414
Stationery		1,184	5,540
Travel & Meeting Costs		5,042	9,193
Trustee Expenses		7,759	5,941
Trustee Fees		<u>103,833</u>	<u>68,347</u>
<b>TOTAL EXPENSES</b>		<b><u>453,766</u></b>	<b><u>294,815</u></b>
<b>NET SURPLUS FOR YEAR</b>		<b><u>\$5,622,905</u></b>	<b><u>\$3,826,512</u></b>

**Statement of Movements in Trust Equity  
For The Year Ended 31 March 1998**

<b>TRUST EQUITY AT BEGINNING OF YEAR</b>		<u>100,861,072</u>	<u>87,651,620</u>
(Decrease) / Increase in Share Revaluation Reserve	(2)	(5,069,022)	10,875,439
Net Surplus for Year		<u>5,622,905</u>	<u>3,826,512</u>
Total Recognised Revenues and Expenses		<u>553,883</u>	<u>14,701,951</u>
Transfer to Provision for Distributions		<u>(3,758,347)</u>	<u>(1,492,499)</u>
<b>TRUST EQUITY AT END OF YEAR</b>		<b><u>\$97,656,608</u></b>	<b><u>\$ 100,861,072</u></b>

**Tauranga Energy Consumer Trust**  
**Statement of Financial Position**  
**As At 31 March 1998**

	Notes	1998	1997
<b>TOTAL TRUST EQUITY</b>		<b><u>\$ 97,656,608</u></b>	<b><u>\$ 100,861,072</u></b>
<i>Represented by:</i>			
<b>Investments</b>			
Shares in TrustPower Limited	(3)	94,822,174	99,765,510
Shares in Infrastructure & Utilities NZ Ltd	(3)	2,047,000	
WestpacTrust Term Deposits		<u>2,213,852</u>	<u>1,311,062</u>
		<b><u>\$99,083,033</u></b>	<b><u>\$101,076,579</u></b>
<b>Current Assets</b>			
WestpacTrust - Current Account		28,048	-
Taxation Refund Due	(5)	79,723	73,595
Accrued Interest		<u>          -</u>	<u>4,208</u>
		<b><u>\$107,771</u></b>	<b><u>\$77,803</u></b>
<b>TOTAL INVESTMENTS &amp; CURRENT ASSETS</b>		<b><u>\$99,190,804</u></b>	<b><u>\$101,154,382</u></b>
<b>Less Current Liabilities</b>			
Sundry Accounts Payable		135,708	39,304
TrustBank BOP Ltd - Current Account		<u>          -</u>	<u>30,066</u>
		<b><u>\$135,708</u></b>	<b><u>\$69,370</u></b>
<b>Less Provision for Distributions</b>			
- Community Organisations	(7)	298,488	223,940
- Major Community Facility Reserve	(7)	1,000,000	-
- Special Programmes Reserve	(7)	<u>100,000</u>	<u>          -</u>
		<b><u>\$1,398,488</u></b>	<b><u>\$223,940</u></b>
<b>TOTAL CURRENT LIABILITIES &amp; DISTRIBUTION PROVISION</b>		<b><u>\$1,534,196</u></b>	<b><u>\$293,310</u></b>
<b>NET ASSETS</b>		<b><u>\$97,656,608</u></b>	<b><u>\$100,861,072</u></b>

Trustee  Date 2 / 9 / 98

Trustee  Date 2 / 9 / 98

**Tauranga Energy Consumer Trust**  
**Statement of Cashflows**  
**For The Year Ended 31 March 1998**

	Notes	1998	1997
<b>CASHFLOWS FROM OPERATING ACTIVITIES</b>			
Cash Was Provided From: Dividends Received		5,919,151	3,922,587
Interest Received		161,728	201,576
Taxation Refund		<u>29,132</u>	<u>-</u>
		6,110,011	4,124,163
Cash Was Disbursed to:			
Payments to Suppliers & Trustees		(357,362)	(268,998)
Taxation Paid		<u>(35,260)</u>	<u>(41,145)</u>
<b>NET CASHFLOWS FROM OPERATING ACTIVITIES</b>		<b><u>\$5,717,389</u></b>	<b><u>\$3,814,020</u></b>
<b>CASHFLOWS FOR INVESTING ACTIVITIES</b>			
Cash Was Disbursed to:			
Purchase of TrustPower Shares Ex Dividend			(2,568,611)
Purchase of Infrastructure & Utilities NZ Ltd shares		<u>(2,172,686)</u>	<u>-</u>
<b>NET CASHFLOWS FOR INVESTING ACTIVITIES</b>		<b><u>\$(2,172,686)</u></b>	<b><u>\$(2,568,611)</u></b>
<b>CASHFLOW FOR FINANCING ACTIVITIES</b>			
Cash was disbursed to:			
Contributions to TrustPower Consumers		<u>(2,583,799)</u>	<u>(1,864,900)</u>
<b>NET CASHFLOWS FOR FINANCING ACTIVITIES</b>		<b><u>\$(2,583,799)</u></b>	<b><u>\$(1,864,900)</u></b>
<b>NET INCREASE/(DECREASE) IN CASHFLOWS as above</b>		<b>960,904</b>	<b>(619,491)</b>
<b>Add Opening Bank Balances</b>		<b>1,281,003</b>	<b>1,900,494</b>
<b>CLOSING BANK BALANCES</b>		<b><u>\$2,241,907</u></b>	<b><u>\$1,281,003</u></b>
<b><i>Represented by:</i></b>			
Term Deposits		2,213,859	1,311,069
Current Account		28,048	(30,066)
		<u>\$2,241,907</u>	<u>\$1,281,003</u>
<b>Reconciliation of Net Surplus to Cashflows from Operating Activities</b>			
Net Surplus for Year		5,622,905	3,826,512
Add (Less) Movements in Working Capital Items:			
Sundry Accounts Payable		96,404	25,817
Taxation Paid (less refund)		(6,128)	(41,145)
Accrued Interest		4,208	2,836
<b>Net Cashflows from Operating Activities</b>		<b><u>\$5,717,389</u></b>	<b><u>\$3,814,020</u></b>

# Tauranga Energy Consumer Trust

## Notes to the Financial Statements

### For the Year Ended 31 March 1998

#### 1. STATEMENT OF ACCOUNTING POLICIES

##### A. BACKGROUND

The Tauranga Energy Consumer Trust (formerly Tauranga Power Trust) was established on 21 December 1993 as a consequence of the Tauranga Electric Power Board's Establishment Plan.

The Trust is a Consumer Trust, the income and capital of which are to be used to provide benefits to consumers connected to the TrustPower Electricity network in the area being supplied by the Tauranga Electric Power Board on 21 December 1993.

The Trust is not a Charitable Trust and accordingly may not continue for more than 80 years. On the winding up of the Trust the assets of the Trust which remain will be distributed for the benefit of consumers (as defined above).

Every two years, three of the six elected Trustees retire and the Consumers elect three new Trustees. Retiring Trustees are eligible for nomination for re-election.

The Trust was set up to provide a stable local shareholding base for TrustPower Limited as it seeks to be a strong successful business in the new deregulated energy sector in New Zealand.

##### B. MEASUREMENT BASE

The accounting Principles recognised as appropriate for the measurement and reporting of earnings and financial position on an historical cost basis, are followed by the Trust, with the exception of share investments which are valued at market value.

The financial statements are required to be audited by section 10.4 of the Trust Deed. The financial statements have been prepared in accordance with generally accepted accounting practice.

##### C. SPECIFIC ACCOUNTING POLICIES

The following specific accounting policies which materially effect the measurement of financial performance and financial position have been applied:

###### a) Investments

The investments in TrustPower Ltd and Infrastructure and Utilities NZ Ltd are stated at market value.

An increase in share value arising from the revaluation of these long-term investments will be credited to Trust equity as a revaluation surplus.

To the extent that a decrease in share value offsets a previous increase for the same investment that has been credited to revaluation surplus and not subsequently reversed or utilised, it will be charged against that revaluation surplus. In all other cases a decrease in share value will be charged to income. An increase on revaluation directly related to a previous decrease in share value for the same investment that was charged to income will be credited to income to the extent that it offsets the previously recorded decrease.

###### b) Income Tax

The Trust is liable for income tax.

###### c) Goods and Services Tax

The Trust is not carrying on a taxable activity and accordingly is not registered for GST. The cost of GST is shown in the income and expenditure statement.

**D. CHANGES IN ACCOUNTING POLICY**

There have been no changes in accounting policies. All policies have been applied on bases consistent with those used in previous years.

**2. SHARE REVALUATION RESERVE**

	1998	1997
Opening Balance	54,674,059	43,798,620
Add / (Subtract) Revaluations Current Year	<u>(5,069,022)</u>	<u>10,875,439</u>
Closing Balance End of Year	<u>\$49,605,037</u>	<u>\$54,674,059</u>

**3. INVESTMENTS**

- (a) TrustPower Limited - on 31 March 1994 43,788,000 shares with a par value of 50 cents were gifted to the Tauranga Energy Consumer Trust. Subsequent purchases have increased the holding to 44,939,419 shares.

Fair value has been assessed at \$2.11 per share (\$2.22 per share, 1997), being the closing buy quotation on 31 March 1998. No allowance has been made for commissions on disposal of shares. Values adopted being:

	1998	1997
Opening Balance 44,939,419 shares @ \$2.22 per share	99,765,510	86,321,460
Plus shares purchased during the year in lieu of dividend 1,121,419 shares @ \$2.2905 per share	-	2,568,611
Add / (Less) current year change in valuation	<u>(4,943,336)</u>	<u>10,875,439</u>
Closing Balance 44,939,419 shares @ \$2.11 per share	<u>\$94,822,174</u>	<u>\$99,765,510</u>

[See also note 6(b)]

The Trust has resolved to give to TrustPower Ltd, seven days notice of any resolution to sell any TrustPower Ltd shares.

- (b) Infrastructure and Utilities NZ Limited - During the year ended 31 March 1998 the Trust acquired 2,225,000 shares in Infrastructure and Utilities NZ Ltd at a cost of \$2,172,686. Fair value has been assessed at \$0.92 cents per share being the closing buy quotation on 31 March 1998. No allowance has been made for commissions on disposal of shares. Values adopted being:

	1998	1997
Cost of 2,225,000 shares	2,172,686	-
Add / (Less) current year change in valuation	<u>(125,686)</u>	-
Closing Balance 2,225,000 shares @ 92c	<u>\$2,047,000</u>	-

- (c) WestpacTrust Term Deposits - These deposits are held for varying lengths and are used for working capital purposes. The effective interest rate at 31 March 1998 was 9.45%.

**4. FINANCIAL INSTRUMENTS**

Bank accounts, accounts receivable and accounts payable are financial instruments. The maximum exposure to credit risk is represented by the carrying value of each financial asset in the statement of financial position.

Term deposits are all held with WestpacTrust. This financial institution is considered reputable by the Trustees. All financial instruments are shown at values equivalent to their fair values.

## 5. TAXATION

	1998	1997
Net Surplus Income	5,622,905	3,826,512
Add Imputation Credit	2,915,403	1,932,021
Non-Deductible Expenditure	<u>257,734</u>	<u>114,610</u>
	8,796,042	5,873,143
Less Loss Brought Forward	<u>105,869</u>	<u>98,738</u>
	<u>\$8,690,173</u>	<u>\$5,774,405</u>
Tax Charge Thereon @ 33%	2,867,757	1,905,554
Less Imputation Credits	<u>(2,915,403)</u>	<u>(1,932,021)</u>
Unutilised Imputation Credits	<u>(\$47,646)</u>	<u>(\$26,467)</u>
Carried Forward as a Tax Loss	<u>\$144,382</u>	<u>\$105,869</u>
Taxation Refund Due		
Opening Balance	73595	32,450
Less Refund Received	<u>(29,132)</u>	<u>(3,319)</u>
Add RWT Deducted from Interest Earned	<u>35,260</u>	<u>44,464</u>
Taxation Refund Due	<u>\$79,723</u>	<u>\$73,595</u>

## 6. (a) COMMITMENTS AND CONTINGENCIES

The Trust had no commitments or contingencies at the end of the financial year other than to fund Energy Efficiency Programmes for Consumers amounting to \$58,359.

### (a) ENERGY REFORM

The Electricity Industry Reform Act 1998 imposes a package of reforms for the New Zealand electricity industry requiring the separation of the line and energy businesses of power companies. The final shape of the Trust's investment in TrustPower Limited is still to be ascertained.

Since the announcement of the reform, listed Power Companies shares have declined in value. At approximately \$1.70 the investment in TrustPower shares has a value of \$76,397,012 which is \$18,425,162 less than the 31 March 1998 value as set out in note 3.

## 7. PROVISION FOR DISTRIBUTIONS

	1998	1997
Opening Balance	223,940	658,145
Plus Distributions Declared	3,774,717	
Less Lapsed Subsidy Allocations	<u>16,370</u>	<u>1,492,499</u>
	3,982,287	2,150,644
Less Distributions Made	<u>(2,583,799)</u>	<u>(1,926,704)</u>
Closing Balance End of Year	<u>\$1,398,488</u>	<u>\$223,940</u>
Being:		
Community Organisation Subsidies Unclaimed	298,488	223,940
Major Community Facility Reserve	1,000,000	-
Community Special Programmes Reserve	<u>100,000</u>	<u>-</u>
	<u>\$1,398,488</u>	<u>\$223,940</u>



## **Audit report**

### **To the readers of Tauranga Energy Consumer Trust**

We have audited the financial statements on pages 6 to 11. The financial statements provide information about the past financial performance of the Trust and its financial position as at 31 March 1998. This information is stated in accordance with the accounting policies set out on pages 9 and 11.

#### **Trustees' responsibilities**

The trustees are responsible for the preparation of financial statements which give a true and fair view of the financial position of the trust as at 31 March 1998 and of the results of its operations and cash flows for the year ended 31 March 1998.

#### **Auditors' responsibilities**

It is our responsibility to express an independent opinion on the financial statements presented by the trustees and report our opinion to you.

#### **Basis of opinion**

An audit includes examining, on a test basis, evidence relevant to the amounts and disclosures in the financial statements. It also includes assessing:

- the significant estimates and judgements made by the trustees in the preparation of the financial statements, and
- whether the accounting policies are appropriate to the trust's circumstances, consistently applied and adequately disclosed.

We conducted our audit in accordance with generally accepted auditing standards in New Zealand. We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatements, whether caused by fraud or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.

Our firm carries out other assignments for the trust in the area of taxation advice. The firm has no other interest in the trust.

#### **Unqualified opinion**

We have obtained all the information and explanations we have required.  
In our opinion:

- proper accounting records have been kept by the trust as far as appears from our examination of those records; and
- the financial statements on pages 6 to 11:
  - a) comply with generally accepted accounting practice;
  - b) give a true and fair view of the financial position of the trust as at 31 March 1998 and the results of its operations and cashflows for the year ended on that date.

Our audit was completed on 2 September 1998 and our unqualified opinion is expressed as at that date.

  
Tauranga

Tauranga  
**Energy Consumer Trust**

12 Elizabeth Street, PO Box 800, Tauranga, Telephone 07 578 5095, Facsimile 07 578 9050



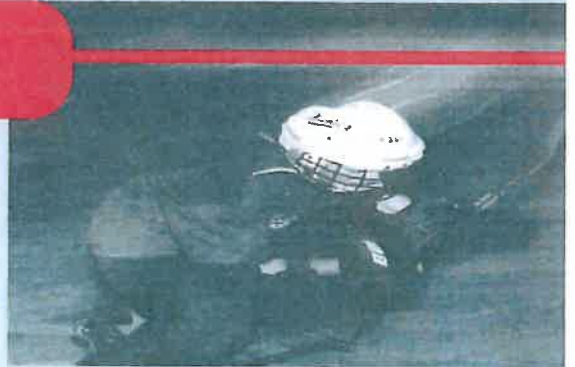


## TAB 5



1 9 9 9

annual report



Tauranga  
Energy Consumer Trust

## Directory

**Trustees:** JF Beange, Chairperson  
MH Cameron, Deputy Chairperson  
MJ Cooney  
BW Cronin  
BWB Jensen  
KJ Jones

**Secretary:** PW Simmonds  
Simmonds Cooney Lellman Ltd  
Chartered Accountants  
273 Devonport Road  
PO Box 800  
Tauranga

**Auditors:** KPMG  
Tauranga

**Solicitors:** Holland Beckett Maltby  
Tauranga  
Chapman Tripp  
Auckland

**Financial Advisors:** Austin Hill & Company Limited  
Auckland

**Bankers:** Westpac Trust and  
Bank of New Zealand  
Tauranga

**Date of  
Commencement:** 21 December 1993



Bruce Cronin

Karen Jones

Jan Beange

Michael Cooney (Behind)

Peter Simmonds (Behind)

Harold Cameron

Barry Jensen

# Chairperson's Report

I am pleased to report the Trust has robustly weathered a tumultuous year of change while continuing to deliver healthy returns to consumer beneficiaries.

## INCOME

Total income for the financial year ending March 1999 (excluding extraordinaries) was up 25% to \$7.6 million with the audited surplus for the year up 22% to \$6.8 million. Trust equity at year end rose a resounding 73% to \$169 million. At the date of this report Trust equity stands at \$213 million.

This level of performance is unlikely to be repeated in the 1999/2000 year as our primary investment vehicle, TrustPower Limited is faced with consolidating its position in the volatile and highly competitive energy generation and retail market.

The Trust received an extraordinary payment during the course of the year of \$2.695 million from The Australian Gas Light Company ("AGL"). This capital payment was received in exchange for our nomination of AGL (pursuant to our right of first refusal) as the preferred purchaser of the TrustPower convertible notes owned by the Tauranga District Council's trading company Tauranga Civic Holdings Limited ("TCHL").

## EXPENDITURE

Trust administration expenses during the year rose significantly. This reflected the increased demands faced by the Trust in its role as a corporate shareholder.

As the Trust has matured it has developed a more pro-active stance with respect to its responsibilities as a commercial shareholder in publicly listed TrustPower. As a core value the Trust strives to act in a commercially realistic and responsible manner as it manages what is a significant and valuable local public asset.

Activities of note, for which the Trust engaged considerable assistance from appropriate legal and commercial advisers, included:

- (i) The first full Ownership Review as required by the Trust Deed which incorporated Consumer Consultation and amendments to the Trust Deed;
- (ii) Submissions to government on the Electricity Industry Reform Bill;
- (iii) Review of the National Power proposal to amalgamate TrustPower, Central Power and Power Co;
- (iv) Direct mail postcard campaign to consumer beneficiaries on the potential tax consequences associated with National Power and the Electricity Industry Reform Act;
- (v) Submissions to the Inland Revenue Department on the taxation consequences of the Electricity Industry Reform Act;
- (vi) Review of the proposal by TrustPower to sell its Ilnes business;
- (vii) Consideration of the first transfer notice received from TCHL for the sale of its TrustPower convertible notes;

(viii) Direct negotiations with TCHL for the purchase of the TrustPower convertible notes;

and

(ix) Negotiation and finalisation of waiver fee of \$2.695 million from AGL and entry into a put option with AGL over 3.93 million TrustPower shares.

Faced with the demands of an active corporate investment and very active corporate shareholding "partners" I anticipate that administration costs will remain high in 1999/2000. However, in saying that you can rest assured that, while Trustees will continue to ensure the Trust is run in a professional manner, costs will be contained where possible.

## INVESTMENT

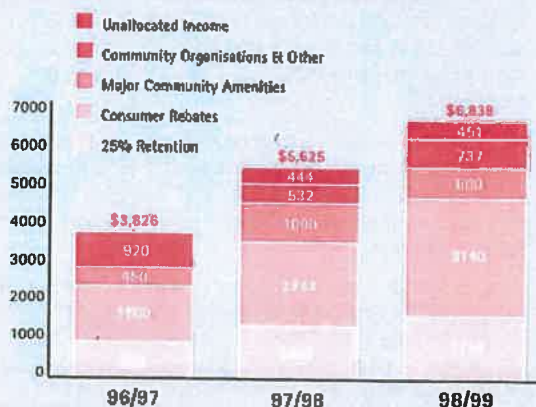
During the year, due to an issue of shares by TrustPower to AGL, the Trust's shareholding level in TrustPower dropped to 22.7% (from 24.9%). If, in the future the Trust exercises its put option with AGL, or other changes occur on the TrustPower share register, our level of shareholder influence may decrease further.

Trustees are currently considering risk and return policies on investment and diversification so that the investment of our primary core funds (currently invested in TrustPower) and our retained earnings (currently invested in Infrastructure & Utilities Limited (Infracore) and cash) is, within the constraints of our status as a consumer trust, prudently allocated.

## DISTRIBUTIONS

As you can see from the following graph (which illustrates net income and allocations over the past 3 years) the Trust continues to focus on rebates to consumers as its prime income distribution mechanism.

Distribution of Net Income in \$ Thousands



The Major Communities Amenities Fund (which was allocated a further \$800,000.00 to March 1999) has the potential to make a significant impact on improving our community for all to enjoy. \$1 million has been committed out of the Amenities Fund to the Tauranga District Council for the Mount Action Centre.

A special allocation of \$100,000 has been made for the inaugural Tauranga Arts Festival. From the Special Programmes Reserve consumers have been allocated \$55,000.00 for a Ropes Training course for youth and also a further \$50,000.00 for youth activities at the Mount Action Centre.

Distributions under our Community Organisation Subsidy scheme are listed elsewhere in this report.

## CORPORATE ACTIVITY

I have already listed a number of activities engaged in by the Trust to March 1999.

However, special mention needs to be made of the sale by TCHL and the Tauranga District Council of the TrustPower convertible notes

You may recall that last year I advised that the Trust had entered into a Shareholders Agreement with the Tauranga District Council and TCHL. This agreement conferred a right of first refusal on the Trust over TCHL's shareholding in TrustPower. This shareholding was put up for sale late in 1998.

From late December through to the end of March 1999 there was a period of intense activity and effort by your Trustees. Initially the Trust's objective was to buy the TCHL notes itself. When that course became too risky because of potential tax problems and the high cost of borrowing we entered into discussions with AGL and also Infratil and Alliant International. Based upon advice received and considerable analysis and discussion we decided it was in TrustPower's and the Trust's best interests if AGL became the owner of the TCHL shareholding.

From March, when TCHL decided to sell its shareholding to American based Alliant International, the Trust became embroiled in extremely time consuming litigation and communication efforts to protect our right of first refusal and to secure the shareholding. The situation was resolved earlier this month. AGL is now the owner of the TrustPower convertible notes.

We hope this will now provide a more stable shareholding platform for TrustPower and that the business of the Tauranga Energy Consumer Trust will return to normal.

## CONSUMER CONSULTATION

In May 1999 Trustees consulted consumers on a number of technical changes to the Trust Deed. The main amendment, necessitated by TrustPower's sale of its line business, clarified for consumers what qualifies them as a Trust beneficiary.

Consumer beneficiaries should be aware that their link with the Trust (and therefore their right to receive Trust income or capital) comes through the fact that they are customers of TrustPower Limited living within the old Tauranga Electric Power Board area.

With respect to the geographic area covered by the Trust it is worth noting that consumers in the old Tauranga Electricity Limited ("TEL") area remain outside our boundaries. In 1998, following consultation with consumer beneficiaries, Trustees decided to include the ex-TEL consumers if the Trust received fair and reasonable

consideration for their admittance from the Tauranga District Council (the previous owner of TEL).

Despite recent press coverage which might have indicated a promise to admit the ex-TEL consumers the Trust has given no such promise to Tauranga District Council. However, Trustees have resolved to reopen the matter and give it favourable consideration so long as the Trust is not at risk of acting to the detriment of its current beneficiaries.

## PUBLIC AWARENESS

One of our primary objectives for 1998/1999 was to increase the profile and public awareness of the Trust. In March 1998 research conducted by the Trust indicated that only 14% of participants recognised the Trust by its name and displayed accurate knowledge about the Trust's role and purpose.

To improve awareness, and thus improve our public accountability, the Trust has taken a more assertive stance in managing communication issues.

By March 1999 25% of those surveyed recognised the Trust by name and displayed an accurate knowledge of our activities.

Obviously there is still a long way to go in achieving a satisfactory level of recognition. We are hopeful though that the direct mailing of rebate cheques to consumer beneficiaries; the funding of community organisations and major community amenities; our stance on corporate issues relating to TrustPower; and a proactive awareness of the need to raise profile, will continue to see an improvement in recognition rates and thus Trust accountability.

## TRUSTEE ELECTION

Mr Rufus Wallingford did not seek re-election in 1998. The vacancy created by his retirement was filled by the election of Mr Michael Cooney.

Mr Wallingford had a long history of service to the old Power Board and then the Trust. I take this opportunity to thank Mr Wallingford for his service to the Trust and to our community.

## CONCLUSION

The Trust does not have a full time manager but relies upon the services of our Secretary, Mr Peter Simmonds and the staff at Simmonds Cooney Lellman. I would like to thank Mr Simmonds and his staff for continuing to provide a very high level of support and skilled assistance to the Trust. My fellow Trustees also deserve a special thanks for the attention to detail, thoughtful consideration and courtesy they have displayed in, some often intense, discussions during the course of the year.

I foreshadowed last year that the level of activity for the Trust would be high.

We now expect TrustPower to vigorously pursue the opportunities created by a potential strategic alliance with AGL and the other value creating opportunities emanating from a changing energy sector. Arising from this the demands upon the Trust to actively review shareholder proposals and manage our role will continue.

In all other respects we will continue to ensure that Trust income is allocated in a way which balances the interests of individual consumers with the wider needs of our community.

Jan Beange - Chairperson  
27 September 1999

# Community Organisation Subsidies

APPROVED DURING YEAR ENDED 31 MARCH 1999

Anglican Parish of Mount Maunganui	Dishwasher, sound system, heaters, etc	\$15,000.00
Avalon Training Centre	Toasted sandwich maker, dust remover etc	\$3,000.00
Bay of Plenty Coast Rowing Club	Hot water cylinder, lights, security system	\$3,927.00
Bellevue Primary School	Sensor Units, computer, overhead projector	\$3,000.00
Bethlehem Pottery Club	Televideo, lighting, heater, microwave	\$842.40
Bethlehem Primary School	Network computers, printer	\$491.00
Bowentown Boating and Sport Fishing Club	Lift, oven, dishwasher, etc	\$15,000.00
Brookfield Free Kindergarten	CD and tape player system	\$134.50
Brookfield Primary School	Internal/External intercom system	\$1,900.00
Fairhaven School	Computers	\$12,000.00
Faith Bible College	TV and VCR, overhead projector, PA system	\$2,000.00
Gateway Christian Fellowship Trust	Portable sound equipment	\$840.00
Gideon Fields	Electrical services and underground cable	\$3,073.00
Greenpark School	Cassette recorders	\$257.00
Greerton Free Kindergarten Assoc	Wall fans, ceiling fans and power points	\$364.22
Greerton Village Community Assoc	Christmas lights and their transformers	\$380.00
Greerton Village School	Computers	\$12,000.00
Gwen Rogers Free Kindergarten	Computer and printer	\$1,500.00
Habitat for Humanity Tauranga	Electrical equipment and materials for home	\$1,670.00
Homewood Park Tennis Club	Tennis court lighting	\$15,000.00
Hosanna Christ Gospel Church	Computer, printer, sound system	\$3,000.00
Huria Te Kohanga Reo	Computer package and photocopier	\$1,250.00
IHC Mid Bay of Plenty	Overhead projector, computer, dishwasher	\$5,895.00
IHC Tauranga	2 vacuum cleaners, 2 washing machines etc	\$4,053.00
Judea Community Sports Club	Oven, cooktop, freezer, hydoboil	\$1,500.00
Kaimai School Board of Trustees	Security alarm, printers, scanner, CD/cassette, heaters, video camera	\$6,000.00
Katikati College PTA	Photocopier	\$2,041.00
Katikati Community Baptist Church	Sound system	\$3,000.00
Katikati Rugby and Sports Club Inc	Zip, dishwasher and extractor	\$1,500.00
Katikati Sea Scout Group	Floodlights	\$1,016.33
Maketu Primary School	Computers, headphones, printer, scanner, digital camera	\$7,500.00
Matakana Island Recreation & Community Inc	Sound system	\$3,000.00
Matua Plunket Kindergarten	Three ceiling fans, one fan heater and rewiring	\$630.00
Maungatapu School Board of Trustees	Heaters, sensor lighting, lights and lamps	\$3,732.19
Mount Maunganui College Board of Trustees	Electric stoves	\$1,838.00
Mount Maunganui Intermediate School	Electric ovens, dryer, microwave, dishwasher, sewing machine, computers	\$6,000.00
Mount Maunganui Lifeguard Service Inc	Lighting, automatic gate	\$3,000.00
Mount Maunganui Playcentre	New plugs, switches and a stove	\$515.00
Mount Maunganui Primary School	Electric piano, library barcode scanner, computer	\$4,561.00
Mount Maunganui Sea Scouts	Outside lighting, coin operated shower	\$1,050.00
Mount Maunganui Sports Club Inc	Electrical wiring of building	\$15,000.00
New Zealand Red Cross - Midland Region	Overhead projector, TV monitor, washing machine, microwave	\$1,750.00
Ngamuwahine Camp Trust	Toaster, computer, printer, scanner	\$900.00
Omanu Beach Surf Life Saving Club	Indoor, outdoor PA system	\$1,937.50
Omanu Primary School	Technology music suite	\$5,175.00
Omokoroa District Sports and Recreation	Burglar alarm, outside lights, flood lighting	\$1,133.00
Omokoroa Point School	Computer, printer	\$2,786.00
Oropi Settlers Inc	Hall lighting and dishwasher	\$3,681.28
Ohauti Settlers Association Inc	Two zip boiling units	\$708.19
Otumoetai Baptist Church	Wiring, heating and lighting	\$7,433.00
Otumoetai Branch Free Kindergarten Assoc	Photocopier	\$1,200.00
Otumoetai Playcentre	Multifunction Oven	\$550.00
Otumoetai Plunket Childcare ("Opeys")	Refrigerator and chest freezer	\$864.00
Otumoetai Tennis Club Inc	Toasted sandwich maker and zip, water cooler	\$1,480.60
Paengaroa Free Kindergarten	Power points, lights, cordless phone	\$235.00



Pahoia School	Pool filtration system	\$1,447.35
Papamoa Baptist Family Centre Childcare	Water cooler and laminator	\$450.00
Papamoa Sports and Recreational Trust	Floodlighting, streetlighting, wiring, security lights, upgrade lighting	\$50,000.00
Pongakawa Playcentre	Hot water zip	\$300.00
Riding for the Disabled (Tga Branch)	Zip water heater	\$280.00
Royal NZ Plunket Society Inc (Te Puke)	Photocopier	\$1,548.00
Selwyn Ridge School	Lighting, rangehood, dishwasher, waste dispose, fridge/freezer	\$20,000.00
St Columba Parish of the Presbyterian Church	Photocopier, computer, tape deck	\$2,000.00
St John Resource Centre Inc	Cooling system, fridge/freezer	\$8,780.00
St Pauls Co-operating Churches	Air conditioning, computer	\$14,900.00
Taharua Coast School	Electrical costs for swimming pool	\$20,000.00
Tauranga Girls College	Chorus Line Production	\$2,500.00
Tauranga Hockey Association Inc	Wiring and electrical equipment for building	\$12,800.00
Tauranga Public Service Childcare Society	Cooktop oven	\$1,024.00
Tauranga Rudolf Steiner School Initiative	Underground power	\$10,000.00
Tauranga Woodcrafters' Club	Electric router and beltsander	\$905.00
Tauranga Worship Centre	Overhead projector, toasters, foodprocessor	\$3,000.00
Tauranga YMCA	Electronic sound equipment	\$4,743.00
Tauriko Playcentre	Oven, frypan, vacuum cleaner, lighting	\$876.00
Tauriko Primary School	Oven, computer, zip, sewing machine, fridge/freezer	\$4,090.00
Te Kupenga Hauora o Tauranga Moana	Security alarm system, smoke sensors	\$848.25
Te Puke Contract Bridge Club Inc	Refrigerator	\$600.00
Te Puke Cricket Club Inc	Water heater	\$2,610.00
Te Puke Hall Society Inc	Spotlights, rewire points, fluorescent lights	\$2,500.00
Te Puke Primary School	Microwave, rangehood, vent	\$851.00
Te Puke Repertory Society Inc	Spotlights and 3-phase installation	\$1,676.84
Te Puke Sports and Recreation Club	Electronic scoring system	\$3,000.00
Te Puke Tennis Club	6 new lights	\$9,000.00
Te Puna School	Air conditioning unit, upgrade computers	\$13,000.00
Te Timatanga Hou Kohanga Reo	TV video, radio cassette, video camera, etc	\$1,519.00
Turning Point Trust	Automate pottery kiln, urn, 2 computers	\$2,000.00
Tutereinga Te Kohanga Reo	Photocopier	\$1,250.00
Waikari Marae Committee	Upgrade wiring, lighting, power points, etc	\$2,981.88
Waipuna Hospice Inc	Electrical supplies and air conditioning	\$34,725.00
Welcome Bay Free Kindergarten	Computer and printer	\$1,200.00
Welcome Bay Rugby League Club	Removal and installation of Park Lights	\$4,613.63

**TOTAL \$440,311.16**

#### Other Community Benefit Funding Approved 1998/1999

Tauranga District Council	For a joint project to develop the Mount Action Centre for mainly youth indoor sport activities	\$1,000,000
Tauranga Arts Festival Trust	For the 10 day 65 performance programme October/November 1999	\$100,000
Tauranga Community Challenge Ropes Course Trust	For a ropes training course for youth	\$55,000
Tauranga District Council	For special youth programmes in conjunction with the Mount Action Centre	\$50,000
Home Energy Efficiency Programmes	In conjunction with TrustPower	\$130,910

**TOTAL \$1,335,910.00**

# Tauranga Energy Consumer Trust

FINANCIAL STATEMENTS

FOR THE YEAR ENDED 31 MARCH 1999

Table of Contents	Page No
Statement of Financial Performance	6
Statement of Movements in Trust Equity	6
Statement of Financial Position	7
Statement of Cashflows	8
Notes to the Financial Statements	9 - 12
Audit Report	13

# Statement of Financial Performance

FOR THE YEAR ENDED 31 MARCH 1999

	Notes	1999	1998
<b>Operating Income</b>			
Dividend	- TrustPower Limited	7,361,077	5,919,151
	- Infrastructure & Utilities NZ Limited	127,938	-
Interest	- WestpacTrust	131,892	157,520
	- Bank of New Zealand	16,726	-
<b>TOTAL INCOME</b>		<b>\$7,637,733</b>	<b>\$6,076,671</b>
<b>Expenses</b>			
Audit Fee		4,368	2,500
Bank Fees & Sundry		3,003	3,403
Consumer Consultation, Research & Reporting		31,410	51,091
Consumer Postcard Campaign		39,282	-
Election Costs		48,982	-
Electricity Rebate Administration Costs		49,941	11,776
Goods & Services Tax		72,914	45,690
Insurance		10,900	10,900
Community Grant Administration Costs		30,208	32,750
Legal and Advisory Fees		269,460	107,219
Secretarial Costs		99,846	70,619
Stationery		2,376	1,184
Travel and Meeting Costs		11,672	5,042
Trustee Expenses		9,722	7,759
Trustee Fees		115,091	103,833
<b>TOTAL EXPENSES</b>		<b>799,175</b>	<b>453,766</b>
<b>NET OPERATING SURPLUS</b>		<b>6,838,558</b>	<b>5,622,905</b>
Add Other Income	[8]	2,695,500	-
<b>FINAL SURPLUS FOR YEAR</b>		<b>\$9,534,058</b>	<b>\$5,622,905</b>

# Statement of Movements in Trust Equity

FOR THE YEAR ENDED 31 MARCH 1999

TRUST EQUITY AT BEGINNING OF YEAR		97,656,608	100,861,072
(Decrease) / Increase in Share Revaluation Reserve		66,408,157	(5,069,022)
Final Surplus for Year		9,534,058	5,622,905
Total Recognised Revenues and Expenses		75,942,215	553,883
Transfer to Provision for Distributions	[7]	(4,676,429)	(3,758,347)
<b>TRUST EQUITY AT END OF YEAR</b>		<b>\$168,922,394</b>	<b>\$97,656,608</b>

# Statement of Financial Position

AS AT 31 MARCH 1999

	Notes	1999	1998		
<b>TRUST EQUITY</b>		<b>\$168,922,394</b>	<b>\$97,656,608</b>		
<i>Represented by:</i>					
<b>Investments</b>					
Shares in TrustPower Ltd	[3]	159,984,331	94,822,174		
Shares in Infrastructure & Utilities NZ Ltd	[3]	3,293,000	2,047,000		
WestpacTrust Short Term Deposit		3,200,000	2,213,859		
Bank of New Zealand Short Term Deposit		5,000,000	171,477,331	-	99,083,033
<b>Current Assets</b>					
WestpacTrust - Current Account		39,671	28,048		
WestpacTrust - Rebate Account		35,708	-		
Taxation Refund Due	[5]	65,150	140,529	79,723	107,771
<b>TOTAL INVESTMENTS &amp; CURRENT ASSETS</b>		<b>171,617,860</b>	<b>99,190,804</b>		
<b>Less Current Liabilities</b>					
Sundry Accounts Payable		165,442	135,708		
<b>Less Provision for Distributions</b>					
Community Organisations	[7]	428,024	298,488		
Major Community Facility		1,800,000	1,000,000		
Special Programmes		200,000	100,000		
Tauranga Arts Festival		100,000	-		
Electricity Rebates Unclaimed		2,000	2,530,024	-	1,398,488
<b>TOTAL CURRENT LIABILITIES &amp; DISTRIBUTION PROVISION</b>		<b>2,695,466</b>	<b>1,534,196</b>		
<b>NET ASSETS</b>		<b>\$168,922,394</b>	<b>\$97,656,608</b>		

Trustee



Date: 21 September 1999

Trustee



Date: 21 September 1999

# Statement of Cashflows

FOR THE YEAR ENDED 31 MARCH 1999

	Notes	1999	1998
<b>CASHFLOWS FROM OPERATING ACTIVITIES</b>			
<i>Cash was provided from:</i>			
Dividends Received		7,489,015	5,919,151
Interest Received		148,718	161,728
Taxation Refund		44,461	29,132
Other Income	[8]	2,695,500	-
		<u>10,377,694</u>	<u>6,110,011</u>
<i>Cash was disbursed to:</i>			
Payments to Suppliers & Trustees		(769,441)	(357,362)
Taxation Paid		(29,888)	(35,260)
		<u>(799,329)</u>	<u>(392,622)</u>
<b>NET CASHFLOWS FROM OPERATING ACTIVITIES</b>		<b><u>\$9,578,365</u></b>	<b><u>\$5,717,389</u></b>
<b>CASHFLOWS FROM INVESTING ACTIVITIES</b>			
<i>Cash was disbursed to:</i>			
Purchase of Infrastructure & Utilities NZ Ltd shares		-	(2,172,686)
<b>NET CASHFLOWS FROM INVESTING ACTIVITIES</b>		<b><u>-</u></b>	<b><u>\$(2,172,686)</u></b>
<b>CASHFLOWS FROM FINANCING ACTIVITIES</b>			
<i>Cash was disbursed to:</i>			
Contributions to TrustPower Consumers		(3,544,893)	(2,583,799)
<b>NET CASHFLOWS FROM FINANCING ACTIVITIES</b>		<b><u>\$(3,544,893)</u></b>	<b><u>\$(2,583,799)</u></b>
<b>NET INCREASE/(DECREASE) IN CASHFLOWS as above</b>		<b>6,033,472</b>	<b>960,904</b>
Add Opening Bank Balances		2,241,907	1,281,003
<b>CLOSING BANK BALANCES</b>		<b><u>\$8,275,379</u></b>	<b><u>\$2,241,907</u></b>
<i>Represented by:</i>			
WestpacTrust Short Term Deposit		3,200,000	2,213,859
Bank of New Zealand Short Term Deposit		5,000,000	-
WestpacTrust Current Account		39,671	28,048
WestpacTrust Rebate Account		35,708	-
		<u>\$8,275,379</u>	<u>\$2,241,907</u>
<b>Reconciliation of Net Surplus to Cashflows from Operating Activities</b>			
Net Surplus for Year		6,838,558	5,622,905
Other Income	[8]	2,695,500	-
<i>Add (Less) Movements in Working Capital Items</i>			
Sundry Accounts Payable		29,734	96,404
Taxation Paid (less refund)		14,573	(6,126)
Accrued Interest		-	4,208
<b>NET CASHFLOWS FROM OPERATING ACTIVITIES (as above)</b>		<b><u>\$9,578,365</u></b>	<b><u>\$5,717,389</u></b>

# Notes to the Financial Statements

FOR THE YEAR ENDED 31 MARCH 1999

## 1. STATEMENT OF ACCOUNTING POLICIES

### 1A. BACKGROUND

The Tauranga Energy Consumer Trust (formerly Tauranga Power Trust) was established on 21 December 1993 as a consequence of the Tauranga Electric Power Board's Establishment Plan.

The Trust is a Consumer Trust, the income and capital of which are to be used to provide benefits to Consumers who are liable to pay TrustPower for electrical energy supplied to premises in the area being supplied by the Tauranga Electric Power Board on 21 December 1993. [This is a new definition following the sale of TrustPower's lines business in February 1999 pursuant to the requirements of the Energy Industry Reform Act].

The Trust is not a Charitable Trust and accordingly may not continue for more than 80 years. On the winding up of the Trust the assets of the Trust which remain will be distributed for the benefit of Consumers (as defined above).

Every two years, three of the six elected Trustees retire and the Consumers elect three new Trustees. Retiring Trustees are eligible for nomination for re-election.

The Trust was set up to provide a stable local shareholding base for TrustPower Limited as it sought to be a strong successful business in the deregulated energy sector in New Zealand.

### B. MEASUREMENT BASE

The accounting Principles recognised as appropriate for the measurement and reporting of earnings and financial position on an historical cost basis, are followed by the Trust, with the exception of share investments which are valued at market value.

The financial statements are required to be audited by section 10.4 of the Trust Deed. The financial statements have been prepared in accordance with generally accepted accounting practice.

### C. SPECIFIC ACCOUNTING POLICIES

The following specific accounting policies which materially effect the measurement of financial performance and financial position have been applied:

#### a) Investments

The investments in TrustPower Ltd and Infrastructure and Utilities NZ Ltd are stated at market value.

An increase in share value arising from the revaluation of these long-term investments will be credited to Trust equity as a revaluation surplus.

To the extent that a decrease in share value offsets a previous increase for the same investment that has been credited to revaluation surplus and not subsequently reversed or utilised, it will be charged against that revaluation surplus. In all other cases a decrease in share value will be charged to income. An increase on revaluation directly related to a previous decrease in share value for the same investment that was charged to income will be credited to income to the extent that it offsets the previously recorded decrease.

#### b) Income Tax

The Trust is liable for income tax.

#### c) Goods and Services Tax

The Trust is not carrying on a taxable activity and accordingly is not registered for GST. The cost of GST is shown in the income and expenditure statement.

### D. CHANGES IN ACCOUNTING POLICY

There have been no changes in accounting policies. All policies have been applied on bases consistent with those used in previous years.

# Notes to the Financial Statements

FOR THE YEAR ENDED 31 MARCH 1999

## 2. SHARE REVALUATION RESERVE

	1999	1998
Opening Balance/	49,605,037	54,674,059
Add / (Subtract) Revaluations Current Year	66,408,157	(5,069,022)
Closing Balance End of Year	<b>\$116,013,194</b>	<b>\$49,605,037</b>

## 3. INVESTMENTS

- (a) TrustPower Limited – on 31 March 1994 43,788,000 shares with a par value of 50 cents were gifted to the Tauranga Energy Consumer Trust. Subsequent purchases have increased the holding to 44,939,419 shares.

Fair value has been assessed at \$3.56 per share (\$2.11 per share, 1998), being the closing buy quotation on 31 March 1999. No allowance has been made for commissions on disposal of shares. Values adopted being:

	1999	1998
Opening Balance 44,939,419 shares @ \$2.11 per share	94,822,174	99,765,510
Add / (Less) current year change in valuation	65,162,157	(4,943,336)
Closing Balance 44,939,419 shares @ \$3.56 per share	<b>\$159,984,331</b>	<b>\$94,822,174</b>

[See also note 6(b)]

The Trust has resolved to give to TrustPower Ltd, seven days notice of any resolution to sell any TrustPower Ltd shares.

- (b) Infrastructure and Utilities NZ Limited - The Trust purchased 2,225,000 shares in December 1997 at a cost of \$2,172,686. Fair value has been assessed at \$1.48 per share (\$0.92 per share, 1998) being the closing buy quotation on 31 March 1999. No allowance has been made for commissions on disposal of shares. Values adopted being:

	1999	1998
Opening Balance 2,225,000 shares @ 0.92c	2,047,000	-
Cost of 2,225,000 shares	-	2,172,686
Add / (Less) current year change in valuation	1,246,000	(125,686)
Closing Balance 2,225,000 shares @ 1.48c	<b>\$3,293,000</b>	<b>\$2,047,000</b>

[See also note 6(b)]

- (c) WestpacTrust Term Deposit – This deposit is held upon call and is used for working capital purposes. The effective interest rate at 31 March 1999 was 4.35%.

- (d) Bank of New Zealand Deposit – This deposit is held on a 58 day deposit maturing 30 April 1999. The effective interest rate at 31 March 1999 was 4.38%.

# Notes to the Financial Statements

FOR THE YEAR ENDED 31 MARCH 1999

## 4. FINANCIAL INSTRUMENTS

Bank accounts, accounts receivable and accounts payable are financial instruments. The maximum exposure to credit risk is represented by the carrying value of each financial asset in the statement of financial position.

Term deposits are all held with WestpacTrust and Bank of New Zealand. These financial institutions are considered reputable by the Trustees. All financial instruments are shown at values equivalent to their fair values.

## 5. TAXATION

	Note	1999	1998
Final Surplus income for year		9,534,058	5,622,905
Add Imputation Credit		3,688,619	2,915,403
Add Non-Deductible Expenditure		372,783	257,734
Less Non-Assessable Income	[B]	(2,695,500)	-
		10,899,960	8,796,042
Less Loss Brought Forward		144,381	105,869
		\$10,755,579	\$8,690,173
Tax Charge Thereon @ 33%		3,549,341	2,867,757
Less Imputation Credits		3,688,619	(2,915,403)
		(\$139,278)	(\$47,646)
		\$422,055	\$144,382
<b>Taxation Refund Due</b>			
Opening Balance		79,723	73,595
Less Refund Received		(44,461)	(29,132)
Add RWT Deducted from Interest Earned		29,888	35,260
Taxation Refund Due		\$65,150	\$79,723

## 6. COMMITMENTS AND CONTINGENCIES

(a) The Trust had no commitments or contingencies at the end of the financial year other than those disclosed in the Statement of Financial Position.

(b) Since the end of the financial year, the buy quotation for TrustPower shares has increased to \$4.55 being a \$44,490,000 increase in the value of the Trust's shareholding. The buy quotation for Infrastructure & Utilities shares has decreased to \$1.40 being a \$178,000 decrease in the value of the Trust's shareholding.



# Notes to the Financial Statements

FOR THE YEAR ENDED 31 MARCH 1999

## 7. PROVISION FOR DISTRIBUTIONS

	1999	1998
Opening Balance	1,398,488	223,940
<i>Plus Distributions Declared</i>		
Community Organisations Subsidies	440,311	315,983
Major Community Facility	800,000	1,000,000
Community Special Programmes	100,000	100,000
Tauranga Arts Festival	100,000	-
Electricity Rebates	3,139,462	2,243,029
Energy Efficiency Programmes	130,910	115,705
	4,710,683	3,774,717
Less Prior Year Lapsed Community Organisation Subsidies	(34,254)	(16,370)
	4,676,429	3,758,347
Less Distributions Made	(3,544,893)	(2,583,799)
<b>Closing Balance End of Year</b>	<b>\$2,530,024</b>	<b>\$1,398,488</b>
Being:		
Community Organisation Subsidies Unclaimed	428,024	298,488
Major Community Facility	1,800,000	1,000,000
Community Special Programmes	200,000	100,000
Tauranga Arts Festival	100,000	-
Electricity Rebates Unclaimed	2,000	-
	<b>\$2,530,024</b>	<b>\$1,398,488</b>

## 8. RIGHT OF FIRST REFUSAL OVER TRUSTPOWER CONVERTIBLE NOTES OWNED BY TAURANGA CIVIC HOLDINGS LIMITED (TCHL)

The Trust received from The Australian Gas Light Company (AGL) the sum of \$2,695,500 for waiving or designating to AGL its right of first refusal pursuant to a shareholders agreement with TCHL, in respect of 14,975,000 TrustPower convertible notes held by TCHL.

# Audit Report

TO THE READERS OF TAURANGA ENERGY CONSUMER TRUST



We have audited the financial statements on pages 6 to 12. The financial statements provide information about the past financial performance of the Trust and its financial position as at 31 March 1999. This information is stated in accordance with the accounting policies set out on page 9.

## Trustees' responsibilities

The trustees are responsible for the preparation of financial statements which give a true and fair view of the financial position of the trust as at 31 March 1999 and of the results of its operations and cash flows for the year ended 31 March 1999.

## Auditor's responsibilities

It is our responsibility to express an independent opinion on the financial statements presented by the trustees and report our opinion to you.

## Basis of opinion

An audit includes examining, on a test basis, evidence relevant to the amounts and disclosures in the financial statements. It also includes assessing:

- The significant estimates and judgements made by the trustees in the preparation of the financial statements, and
- Whether the accounting policies are appropriate to the trust's circumstances, consistently applied and adequately disclosed.

We conducted our audit in accordance with New Zealand Auditing Standards. We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to obtain reasonable assurance that the financial statements are free from material misstatements, whether caused by fraud or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.

Our firm carries out other assignments for the trust in the area of taxation advice. The firm has no other interest in the trust.

## Unqualified opinion


We have obtained all the information and explanations we have required.

## In our opinion:

- The proper accounting records have been kept by the trust as far as appears from our examination of those records; and
- The financial statements on pages 6 to 12:
  - a) comply with generally accepted accounting practice;
  - b) give a true and fair view of the financial position of the trust as at 31 March 1999 and the results of its operations and cash flows for the year ended on that date.

Our audit was completed on 21 September 1999 and our unqualified opinion is expressed as at that date.

Tauranga



**Tauranga Energy Consumer Trust**

273 Devonport Road  
PO Box 800  
Tauranga  
Telephone (07) 578 5095  
Facsimile (07) 578 9050

## TAB 6



At the heart of  
our community



**TECT**

# TECT Charitable Trust Deed

Updated 21 August 2015



## TABLE OF CONTENTS

1.	DEFINITIONS AND CONSTRUCTION .....	1
2.	NAME OF TRUST .....	4
3.	DECLARATION OF TRUST .....	4
4.	PURPOSES OF THE TRUST .....	4
5.	POWERS OF TRUSTEES.....	5
6.	TRUSTEES' INDEMNITY AND LIMITATION OF LIABILITY .....	6
7.	APPOINTMENT, RETIREMENT AND PROCEEDINGS OF TRUSTEES .....	7
8.	DUTIES OF TRUSTEES .....	8
9.	INFORMATION TO CONSUMERS .....	11
10.	REMUNERATION AND EXPENSES OF TRUSTEES .....	11
11.	VARIATION, REVOCATION OR ADDITION TO TRUST DEED .....	12
12.	WINDING UP OF TRUST .....	13
13.	INCORPORATION .....	13
14.	NOTICES .....	13
15.	RESTRICTIONS ON CHARITABLE BENEFITS FROM THE TRUST .....	13

# TECT CHARITABLE TRUST

## DEED OF TRUST

DATED 27 March 2002

### PARTIES

- (1) **TAURANGA ENERGY CONSUMER TRUST** as established by a Deed of Trust dated 21 December 1993 ("the Settlor"); and
- (2) **MATTHEW HAROLD CAMERON**  
**MICHAEL JAMES COONEY**  
**BRUCE WILLIAM CRONIN**  
**IAN ROBERT HARRIS**  
**KAREN JANE JONES**  
  
(hereinafter together with their successors in office called "the Trustees")

### BACKGROUND

- A. The Settlor has determined to establish a Trust Fund for certain Charitable Purposes.
- B. The Trustees have agreed to act as Trustees of the Trust.
- C. The Settlor and the Trustees have agreed to enter into this Deed for the purposes of establishing the Trust and the trusts and conditions on which the Trust Fund is to be held.

### AGREEMENT

#### 1. DEFINITIONS AND CONSTRUCTION

- 1.1 In this deed, unless the context otherwise requires:

"**Balance Date**" means 31 March or any other date adopted from time to time by TECT as the end of its Financial Year;

"**Board**" means the Tauranga Electric Power Board constituted by the Electric Power Boards Act 1925;

"**Chairperson**" means the Trustee appointed as chairperson of the Trust pursuant to clause 7.5 and holding office as such for the time being;

"**Charitable Body**" means any society, association, trust, institution (whether such entities are incorporated or not) or company formed for the purposes of furthering or promoting a Charitable Purpose and which is not carried on for



the private pecuniary profit of any individual unless permitted under the Income Tax Act 1994;

**“Charitable Consumers”** means each and every Consumer which is a Charitable Body;

**“Charitable Purpose”** means and includes that term as defined by the Charitable Trusts Act 1957, and also means and includes every charitable purpose (whether religious, educational or otherwise) within New Zealand which shall be regarded as charitable by the law for the time being in New Zealand and as the Trustees shall determine from time to time PROVIDED HOWEVER that any such charitable purpose shall also be regarded as charitable under any statute regulation or ordinance of New Zealand relating to income tax, estate duty, gift duty or any other revenue statute for the time being in force in New Zealand;

**“Code of Practice”** means the operating guidelines to promote best practice in energy trust administration adopted or to be adopted by the Trustees in respect of the Trust (as amended or replaced from time to time);

**“Company”** means TrustPower Limited and includes any successor company or any company arising out of any reconstruction, amalgamation or merger of the Company;

**“Consumer”** means a person who is named in the records of the Company as being liable to pay the Company any amount for electrical energy supplied or to be supplied to premises situate in the District;

**“Deed”** means this deed as amended from time to time;

**“Deputy Chairperson”** means the Trustee appointed as deputy chairperson of the Trust pursuant to clause 7.5 and holding office as such for the time being;

**“Directors”** means the directors from time to time of the Company;

**“District”** means:

- (i) the territory over which the Board was authorised to supply electricity immediately prior to the Vesting Date pursuant to the Tauranga Electric Power Board Supply Licence granted to the Board under section 20 of the Electricity Act 1968; and
- (ii) the territory over which Tauranga Electricity Limited was authorised to supply electricity immediately prior to its merger with the Company in 1997 and includes, for the avoidance of doubt, that area comprising the Tauranga City peninsula north of the centreline of 17<sup>th</sup> Avenue, Tauranga.

**“Financial Statements”** means the financial statements of the Trust prepared in accordance with clause 8.2;

**“Financial Year”** means any year or other accounting period ending on a Balance Date;

**"Income"** means

- (i) all net income being dividends, rent, interest or other income derived from the Trust Fund, as and when the same shall be received; and
- (ii) all net income derived from the activities of the Trust, in accordance with the terms of this Deed or otherwise howsoever, as and when the same shall be received and finally determined for each Financial Year of the Trust,

after payment of all expenses relating to the Trust Fund. Those expenses shall include all expenses and outgoings related to the administration, working, management and maintenance of the Trust Fund and to the affairs of the Trust;

**"persons"** includes any individual, corporation, partnership, joint venture, association, trust, organisation, government department or local authorities;

**"Secretary"** means the person appointed as secretary of the Trust pursuant to clause 7.5 and holding office as such for the time being;

**"Special Resolution"** means a resolution of the Trustees passed by a majority of not less than seventy five per cent (75%) of the total number of Trustees in office at the time the Special Resolution is passed;

**"TECT"** means the Tauranga Energy Consumer Trust as established by TECT's Trust Deed;

**"TECT's Trust Deed"** means the Deed of Trust dated 21 December 1993 (as amended from time to time) being the founding document constituting TECT;

**"the Trust"** means the trust established by this Deed;

**"the Trustees"** means the trustees for the time being of the Trust;

**"Trust Fund"** means all the funds of the Trust and includes all capital and Income for the time being held by the Trustees of the Trust;

**"Trustee Act"** means the Trustee Act 1956;

**"Vesting Date"** means the date upon which the Governor-General by Order in Council under section 47 of the Energy Companies Act 1992 vested the undertaking of the Board in the Company and the Company's shares in the trustees of TECT.

1.2 In this Deed, unless the context otherwise requires:

- (a) references to one gender include the other gender;
- (b) references to the singular include the plural and vice versa;

- (c) the headings and the index shall not affect the construction of this Deed;
- (d) references to clauses are references to clauses of this Deed; and
- (e) references to a statute include references to regulations, orders or notices made under or pursuant to such statute. References to any statute, regulations, order or other statutory instrument or by-law shall be deemed to be references to the statute, regulation, order, instrument or by-law as from time to time amended and includes substituted provisions that substantially correspond to those referred to.

## **2. NAME OF TRUST**

- 2.1 The Trust shall be known as the "TECT Charitable Trust" or such other name as the Trustees may determine from time to time with the written consent of TECT.

## **3. DECLARATION OF TRUST**

- 3.1 The Trustees hereby acknowledge and declare that they shall stand possessed of the sum of \$100 settled on the Trust by TECT contemporaneously with the execution of this Deed and all moneys or property of whatever kind hereafter paid, given, or transferred to, vested in, or purchased or acquired by (or agreed to be transferred to or purchased or acquired by) the Trustees are to be held upon the trusts hereby declared and the capital and any accumulations of Income therefrom and all moneys, investments and property of whatever kind from time to time representing the same are also to be held upon the trusts hereby declared and for the purposes and with the powers, authorities and discretions set out in this Deed.

## **4. PURPOSES OF THE TRUST**

- 4.1 Subject to clause 4.2, the Trust is established for Charitable Purposes for the benefit of Charitable Consumers.
- 4.2 If by reason of any alteration in the law relating to income tax, it is at any time necessary to amend the objects and purposes of the Trust in order to preserve the right to exemption from income tax of the kind referred to in paragraphs CB 4(1)(c) and (e) of the Income Tax Act 1994, the objects and purposes of the Trust shall thereupon be deemed to be amended to the extent necessary.
- 4.3 All the objects and purposes of the Trust are to be carried out exclusively within New Zealand.

## **4A. TRUSTS OF INCOME AND CAPITAL**

4A.1 The Trustees shall, until the Trust is wound up under clause 12, stand possessed of the capital and income arising from the Trust Fund upon the following trusts and with and subject to the following powers:

- (a) The Trustees shall from the net annual income derived by the Trust Fund first pay all the fees, costs and disbursements of and incidental to administering the Trust including remuneration and allowances payable to Trustees as hereinafter provided and costs incurred in pursuance of their duties and may in addition set aside reserves of income to provide for any payments or liabilities which the Trustees have power to pay pursuant to this clause 4A.
- (b) The Trustees shall have power in their absolute discretion to accumulate so much of the income of the Trust Fund as they think fit by investing the same so that all such accumulations shall be added to and form part of the capital of the Trust Fund and be held by the Trustees upon the same trusts and with the powers herein declared in respect of such capital but provided that the Trustees may at any time or times resort to such accumulations and pay, apply or appropriate the whole or any part thereof as if the same were income of the Trust Fund arising in the Financial Year in which the same are resorted to.
- (c) The Trustees shall have the power to distribute the balance of the current net annual income and/or capital of the Trust by paying applying or appropriating the same in such manner and in such proportions as the Trustees in their absolute and unfettered discretion shall think proper for or towards the purposes of the Trust set out in clause 4.

## 5. POWERS OF TRUSTEES

- 5.1 Subject to any express terms of this Deed, the Trustees shall have in relation to the Trust Fund and the Income arising from the Trust Fund all the same powers as natural persons acting as beneficial owner of the property from time to time comprising the Trust Fund and such powers shall not be restricted by any principle of construction or rule of law except to the extent that such is obligatory.
- 5.2 Without limiting the generality of clause 5.1 and merely by way of example, the Trustees shall have all those same powers as described in Schedule II to TECT's Trust Deed (in this clause 5.2, "the provisions") which may be exercised either alone or jointly with any other person. For the purposes of interpretation in relation to the provisions, clause 7.5(b) shall apply.
- 5.3 In the exercise of any power, authority or discretion under this Deed, the Trustees shall have no obligation to deal with persons other than those who qualify as Charitable Consumers as defined in this Deed and in particular shall not be required to recognise any trust or other arrangement affecting any Consumer nor shall the Trustees be liable in any respect for any inaccuracies

in the records of the Company which affect the status of any person as being or not being a Consumer.

- 5.4 Notwithstanding the provisions of section 13C of the Trustee Act 1956 and the likelihood that the Trustees will from time to time include persons whose profession, employment or business is or includes acting as a trustee or investing money on behalf of others, the care diligence and skill to be exercised by the Trustees in exercising any power of investment shall not be that required of such persons by section 13C of the Trustee Act 1956 but, subject always to clause 5.5, shall at all times be the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others.
- 5.5 Notwithstanding anything else in this Deed, no Trustee shall be liable for any breach of trust in respect of any duty to exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others or that a prudent person engaged in a profession, employment or business that is or includes acting as a trustee or investing money on behalf of others would exercise in managing the affairs of others merely (in either case) because the investments of the Trust Fund are not diversified.

## **6. TRUSTEES' INDEMNITY AND LIMITATION OF LIABILITY**

- 6.1 Any Trustee, officer or employee of the Trust shall be indemnified out of the assets of the Trust for and in respect of any loss or liability which such Trustee, officer or employee may sustain or incur by reason of the carrying out or omission of any function, duty or power under this Deed and also in respect of any expenses incurred by the Trustees in the management and administration of the Trust Fund unless such loss or liability is attributable to that person's dishonesty or to the wilful commission of an act known by that person to be a breach of trust or to the wilful omission by that person of any act when that omission is known by that person to be a breach of trust. This indemnity is in addition to and not in limitation of any other rights, indemnities or limitations or liabilities that may be available to the Trustees or to trustees in general.
- 6.2 No Trustee acting or purporting to act in the execution of the trusts of this Deed shall be liable for any loss not attributable to that Trustee's own dishonesty or to the wilful commission or omission by that Trustee of an act where such commission or omission is known by the Trustee to be a breach of trust and in particular no Trustee shall be bound to take or be liable for failure to take any proceedings against a co-Trustee for any breach or alleged breach of trust committed by such co-Trustee.
- 6.3 Every Trustee shall be chargeable only for such moneys as shall actually have been received by that Trustee although that Trustee may have joined in any receipt for money received by any other Trustee. No Trustee shall be answerable for the acts or omissions of any other Trustee nor for any loss which may arise by reason of any trust funds being lawfully deposited in the hands of any banker, solicitor or agent or for the sufficiency, insufficiency or

deficiency of any security upon which any trust money or any part thereof may be invested or for any loss in the execution of any trust unless the same shall happen through that Trustee's neglect or default.

## **7. APPOINTMENT, RETIREMENT AND PROCEEDINGS OF TRUSTEES**

- 7.1 (a) The statutory power of appointing new or replacement Trustees at any time shall be vested in TECT.
- (b) The power to remove Trustees at any time shall be vested in TECT.
- (c) The statutory power of appointing Trustees and the power to remove Trustees shall be exercised by TECT in accordance with clause 7.2(c). Written notice of any such appointment and/or removal by TECT shall be promptly given to the Trust and to the Trustee(s) concerned. Any such appointment and/or removal shall be effective from the date of the relevant notice.
- 7.2 (a) The minimum and maximum numbers of Trustees of the Trust from time to time shall be the same as those prescribed for TECT pursuant to TECT's Trust Deed.
- (b) The initial Trustees of the Trust at the date of execution of this Deed shall be the Trustees party to this Deed. All of the initial Trustees confirm that they are existing trustees of TECT.
- (c) (i) Thereafter, the Trustees of the Trust shall be those same persons who are validly elected, or appointed, and continuing in the office of trustee of TECT pursuant to TECT's Trust Deed.
- (ii) For the avoidance of doubt, where a person pursuant to TECT's Trust Deed:
- (A) is validly elected, or appointed, to the office of trustee of TECT;
- (B) resigns from the office of trustee of TECT; or
- (C) is no longer eligible to hold office as a trustee of TECT,
- then such person shall also be appointed to, resign from, or be removed from the office of Trustee of the Trust and TECT by its execution of this Deed confirms that it shall exercise its statutory power of appointment and its power to remove Trustees pursuant to clause 7.1 accordingly to give effect to the intention of this clause.
- 7.3 The Trustees acknowledge and agree that should they retire as a Trustee of the Trust, then they will also retire as a trustee of TECT and vice versa.
- 7.4 Upon every change of trustees, the Trust Fund shall be vested in the Trustees for the time being in office.

- 7.5 (a) To the extent not being inconsistent with any other express provision of this Deed, the provisions set out in Schedule I to TECT's Trust Deed (but excluding clauses 1 and 3.4 thereof) (in this clause 7.5, "the provisions") in effect from time to time shall govern the proceedings of Trustees and associated matters.
- (b) (i) Where defined expressions are used in such provisions and where no meaning has been ascribed to them in clause 1.1 of this Deed, then the meanings given to such defined expressions in clause 1.1 of TECT's Trust Deed shall apply with all amendments and modifications thereto which are necessary to give effect to the intent of this clause.
- (ii) For the avoidance of doubt, those provisions shall apply as if references to the Trust are references to this Trust and as if references to Trustees, Annual General Meetings, the Chairperson, the Deputy Chairperson and the Secretary are references to the Trustees, Annual General Meetings, the Chairperson, Deputy Chairperson and Secretary of this Trust with all amendments or modifications thereto which are necessary to give effect to the intent of this clause.

## 8. DUTIES OF TRUSTEES

- 8.1 The Trustees shall ensure that full and correct accounts of all the financial transactions of the Trust and its assets and liabilities and funds are kept.
- 8.2 The Trustees shall within four months after the end of each Financial Year:
- (a) prepare Financial Statements in accordance with generally accepted accounting practice (within the meaning of section 3 of the Financial Reporting Act 1993, applied as if the Trust was a reporting entity) with respect to the affairs of the Trust for that Financial Year;
- (b) submit those Financial Statements to an auditor for audit; and
- (c) make available to the public (which includes all Consumers) in accordance with clause 8.4 those audited Financial Statements and the auditor's report on those Financial Statements.
- 8.3 In addition to clause 8.2(a), the Financial Statements of the Trust shall show separately:
- (a) the total amount of any distribution of Income or capital paid to Charitable Consumers by way of general distribution (if applicable) in that Financial Year;

- (b) the names of persons to whom distributions of Income or capital have been approved or paid in that Financial Year other than those referred to in clause 8.3(a) together with the individual amounts approved or paid by way of a payment scheme; and
  - (c) a statement confirming that the Trustees have complied with all of their obligations under the Code of Practice.
- 8.4 (a) The Trustees shall make the documents referred to in clause 8.2(c) available to the public (which includes all Consumers) by making copies of them available:
  - (i) for inspection at any office of the Trust or at any other place specified in the notification under clause 8.4(b) (during ordinary office hours) free of charge; and
  - (ii) for purchase at a reasonable price.
- (b) The Trustees shall notify the fact that copies of such documents are so available by advertisement in the news section of two separate editions of each newspaper that is widely read by Consumers.
- 8.5 (a) The Trustees shall in each Financial Year, hold a General Meeting of Consumers at which the Consumers:
  - (i) appoint an auditor to hold office from the conclusion of that meeting until the conclusion of the next annual General Meeting of Consumers; and
  - (ii) if applicable, fix the amount of remuneration payable to Trustees pursuant to clause 10.1(b)(i).
- (b) The Trustees may fill any casual vacancy in the office of auditor by appointing an auditor to hold office, until the conclusion of the next annual meeting of Consumers (but, while the vacancy remains, the surviving or continuing auditor, if any, may continue to act as auditor).
- (c) The fees and expenses of the auditor must be fixed:
  - (i) at the annual meeting of Consumers or in the way the Consumers determine at the meeting, if appointed at the annual meeting; or
  - (ii) by the Trustees, if appointed by the Trustees.
- (d) The auditor:
  - (i) must be a person who is qualified to act as an auditor under section 199(1) of the Companies Act 1993 and, in selecting an



auditor, the Consumers may seek the advice of the Auditor-General; and

- (ii) must not be a Trustee, Director, employee or agent of the Trust, TECT or of the Company or otherwise disqualified from being an auditor under section 199(2)(b) and (d) of the Companies Act 1993.
- (e) In addition, sections 198, 200 and 202 to 207 of the Companies Act 1993 apply in relation to the auditor. These sections of the Companies Act 1993 apply as if references to a company were to a trust, references to a director were to a trustee, references to a board were to the trustees, references to shareholders were to Consumers, references to a subsidiary were to an electricity company owned by the Trust and that company's subsidiaries, and all other necessary modifications were made. In this clause, "electricity company" has the meaning set out in section 3(1) of the Electricity Industry Reform Act 1998.
- 8.6 (a) The Trustees must give no less than 14 days' notice of the annual meeting of Consumers in the news section of two separate editions of each newspaper that is widely read by Consumers.
- (b) Every Consumer shall have one vote.
- (c) The quorum for the annual meeting is 20 Consumers.
- (d) No business may be transacted at the annual meeting if a quorum is not present.
- (e) The regulations under section 172C of the Electricity Act 1992 (if any) may govern proceedings at such annual meeting of Consumers.
- 8.7 (a) If no auditor is appointed in accordance with clause 8.5(a) or a casual vacancy in the office of auditor is not filled within one month of the vacancy occurring in accordance with clause 8.5(b), the Auditor-General must be the auditor of the Trust.
- (b) The Trustees shall, within five working days of clause 8.7(a) becoming applicable, give written notice to the Auditor-General of this fact.
- (c) If this clause 8.7 applies, the sections and Parts of the Public Audit Act 2001 listed in section 19 of that Act apply to the Trust, until an auditor is appointed at an annual meeting of Consumers, as if references in those sections to a public entity were references to the Trust and with any other necessary modifications.
- 8.8 The Trustees shall, from time to time, make a copy of this Deed available to Consumers in accordance with clause 9.

8.9 The Trustees shall comply with the provisions of the Code of Practice in effect from time to time.

## 9. INFORMATION TO CONSUMERS

9.1 Subject to clause 8.4, for the purpose of complying with any requirement under this Deed to make any document or information available to Consumers, it shall be sufficient for the Trustees to make such document or information available for inspection at any office of the Trust or at any other place in the District during normal business hours on any business day.

9.2 The Trustees shall give not less than 3 days' notice in a principal newspaper or newspapers circulating in the District of the place at which and the times when such documents or information may be inspected by Consumers.

## 10. REMUNERATION AND EXPENSES OF TRUSTEES

10.1 (a) Any Trustee hereof who shall be employed in connection with the trusts hereof may be paid all such remuneration for their services as may be normal as if they had been employed in that behalf and had not been a Trustee hereof.

(b)

(i) The Trustees (other than a Trustee remunerated pursuant to clause 10.1(a) to the extent that such remuneration covers services to which this clause 10.1(b) applies) shall be entitled in each Financial Year to such remuneration for their services as may be reasonable having regard to their duties and responsibilities as Trustees.

(ii) No remuneration shall be paid to a Trustee pursuant to clause 10.1(b)(i) unless that remuneration has been authorised by a resolution of Consumers passed at a General Meeting of Consumers held pursuant to clause 8.5(a). Each such resolution shall express Trustees' remuneration as either:

A a monetary sum per annum payable to all Trustees taken together; or

B a monetary sum per annum, plus meeting allowances, payable to any person who from time to time holds office as a Trustee or as the Chairperson or as the Deputy Chairperson.

In the event of an increase in the total number of Trustees holding office, the Trustees may, without the authorisation of a resolution of Consumers, increase the total remuneration by such amount as is necessary to enable the additional Trustee or Trustees to receive remuneration, including provision for meeting allowances, not exceeding the average amount then

being paid to each of the other Trustees (excluding the Chairperson).

- (iii) No resolution which increases the amount fixed pursuant to a previous Consumer resolution shall be passed at a General Meeting of Consumers unless notice of the amount of increase has been given in the notice of meeting.
- (iv) Trustees' remuneration paid pursuant to clause 10.1(a) may be approved by the Trustees without the need for Consumer approval.

10.2 The Trustees shall be entitled to be indemnified against, and reimbursed for, any expenses incurred by them in the exercise of their powers and duties under this Deed.

10.3 The payments of remuneration and expenses to the Trustees pursuant to clauses 10.1(a) , 10.1(b) or clause 10.2 shall be paid out of the Trust Fund or any other fund available for that purpose.

10.4 No Trustee receiving any remuneration referred to in clause 10.1(a) shall take part in any deliberations or proceedings relating to the payment or otherwise of that remuneration nor shall that Trustee in any way determine or materially influence directly or indirectly the nature or amount of that payment or the circumstances in which it is to be paid. Any such remuneration must be approved in writing by TECT.

## 11. VARIATION, REVOCATION OR ADDITION TO TRUST DEED

11.1 Subject to the prior written approval of TECT, the Trustees shall have the power by Special Resolution (of which notice to propose that Special Resolution shall have been given in the notice convening the meeting) to alter or amend the terms of this Deed (including for the avoidance of doubt, the expression of the objects, purposes and proposed activities of the Trust set out in clause 4) PROVIDED THAT the approval of TECT shall not be required in respect of any amendment that is certified by the Trustees as being necessary in order for the Trust to obtain or maintain approval from the Inland Revenue Department as a Charitable Body for tax purposes, and PROVIDED FURTHER THAT no alteration, addition, rescission or other amendment shall be made which shall permit the Trust Fund to be applied for any purpose that is not a Charitable Purpose, and no alteration to the second proviso to this clause 11.1 shall be permitted.

11.2 The parties to this Deed agree that TECT shall not be permitted to give its consent to any proposed amendment to the definition of "Consumer" or "District", or to any proposed amendment to this clause 11.2, until TECT shall have first complied with the provisions of clause 13.2 of TECT's Trust Deed.

## 12. WINDING UP OF TRUST

### 12.1 If at any time:

- (a) a resolution of TECT (or of the Trustees) that the Trust be wound up has been passed and has come into effect; or
- (b) the objects of the Trust shall fail; or
- (c) for any other reason the purposes hereof shall become wholly frustrated and incapable of being carried out; or
- (d) TECT shall cease to exist or a resolution that TECT be wound up in accordance with clauses 14.3 and 14.4 of TECT's Trust Deed has been passed and has come into effect,

the Trustees shall proceed to wind up the Trust.

- 12.2 Upon a winding up for any reason, the surplus assets and funds of the Trust after payment of all liabilities shall be paid, applied or appropriated to or for the benefit of Charitable Consumers as may be determined by the Trustees or in default of such determination as may be directed by the High Court of New Zealand.

## 13. INCORPORATION

- 13.1 The Trustees may at any time and at the expense of the Trust incorporate the Trustees as a Board under the provisions of Part II of the Charitable Trusts Act 1957.

## 14. NOTICES

- 14.1 Any notices or documents to be given to the Trustees pursuant to this Deed shall be in writing signed by the person giving the notice and served at the office of the Trust.

- 14.2 Any notice or document given pursuant to clause 14.1 shall be deemed to be duly given or made:

- (a) if delivered by hand, when so delivered;
- (b) if sent by facsimile, when receipt is confirmed; or
- (c) if sent by post, on the third working day after posting.

## 15. RESTRICTIONS ON CHARITABLE BENEFITS FROM THE TRUST

- 15.1 All provisions of this Deed are to be interpreted as being subject to clause 4.1, and to the requirement that the Trust Fund may only be applied for the Charitable Purposes of Charitable Consumers. In particular, nothing

expressed or implied in this Deed shall permit the activities of the Trustees, or any business carried on by or on behalf of the Trustees, or any part of the Trust Fund to be applied so as to confer a private pecuniary profit on any individual or group of individuals, except to the extent that this Deed authorises the payment of a reasonable market remuneration to any individual (including a Trustee) for services actually rendered to the Trust.

15.2 Clauses 4.1, 4.2, 4.3, 10.4, 11.1, 12.2, and this clause 15 shall apply notwithstanding any other provision in this Deed to the contrary.

15.3 Notwithstanding anything contained or implied in this Deed, where the Trustees carry on or engage in any business by or on behalf of or for the benefit of the Trustees upon the trusts of this Deed, no person defined in section CB 4(1)(e)(i) to (iv) of the Income Tax Act 1994 shall, by virtue of that capacity and within the ambit and scope of section CB 4(1)(e)(v) to (viii), and with the exceptions therein contained, in any way (whether directly or indirectly) determine, or materially influence in any way the determination of:

- (a) the nature or the amount of any benefit or advantage (whether or not convertible into money) or any income of any of the kinds referred to in section CC 1, sub-part CD, sections CE 1, CE 3, CF 1, CG 1, and CH3 of the Income Tax Act 1994 able to be received, gained, achieved, afforded or derived by that person from that business; or
- (b) the circumstances in which that benefit or advantage or income is or is to be so received, gained, achieved, afforded or derived.

15.4 Nothing in this Deed shall authorise the derivation of income to which section CB 4(1)(e) of the Income Tax Act 1994 applies and which is excluded from exemption from income tax by the said section CB 4(1)(e).

**IN WITNESS WHEREOF** this Deed has been executed the day and year first hereinbefore written.

**EXECUTED AS A DEED**

**SIGNED for and on behalf of** )  
**TAURANGA ENERGY CONSUMER** )  
**TRUST as Settlor in the presence of:** )

**Witness**

**Trustee/Authorised Signatory**

**Signature:**

**Name (full):**

**Trustee/Authorised Signatory**

**Occupation:**

**Address:**

**SIGNED by MATTHEW HAROLD** )  
**CAMERON as Trustee in the presence** )  
**of:** )

\_\_\_\_\_  
Signature of M H Cameron

**Witness**

**Signature:** \_\_\_\_\_

**Name (full):** \_\_\_\_\_

**Occupation:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**SIGNED by MICHAEL JAMES** )  
**COONEY as Trustee in the presence** )  
**of:** )

\_\_\_\_\_  
Signature of M J Cooney

**Witness**

**Signature:** \_\_\_\_\_

**Name (full):** \_\_\_\_\_

**Occupation:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**SIGNED by BRUCE WILLIAM )  
CRONIN as Trustee in the presence )  
of:**

\_\_\_\_\_  
Signature of B W Cronin

**Witness**

Signature: \_\_\_\_\_

Name (full): \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

**SIGNED by IAN ROBERT HARRIS as )  
Trustee in the presence of: )**

\_\_\_\_\_  
Signature of I R Harris

**Witness**

Signature: \_\_\_\_\_

Name (full): \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

**SIGNED by KAREN JANE JONES as )  
Trustee in the presence of: )**

\_\_\_\_\_  
signature of K J Jones

**Witness**

Signature: \_\_\_\_\_

Name (full): \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

# TAB 7

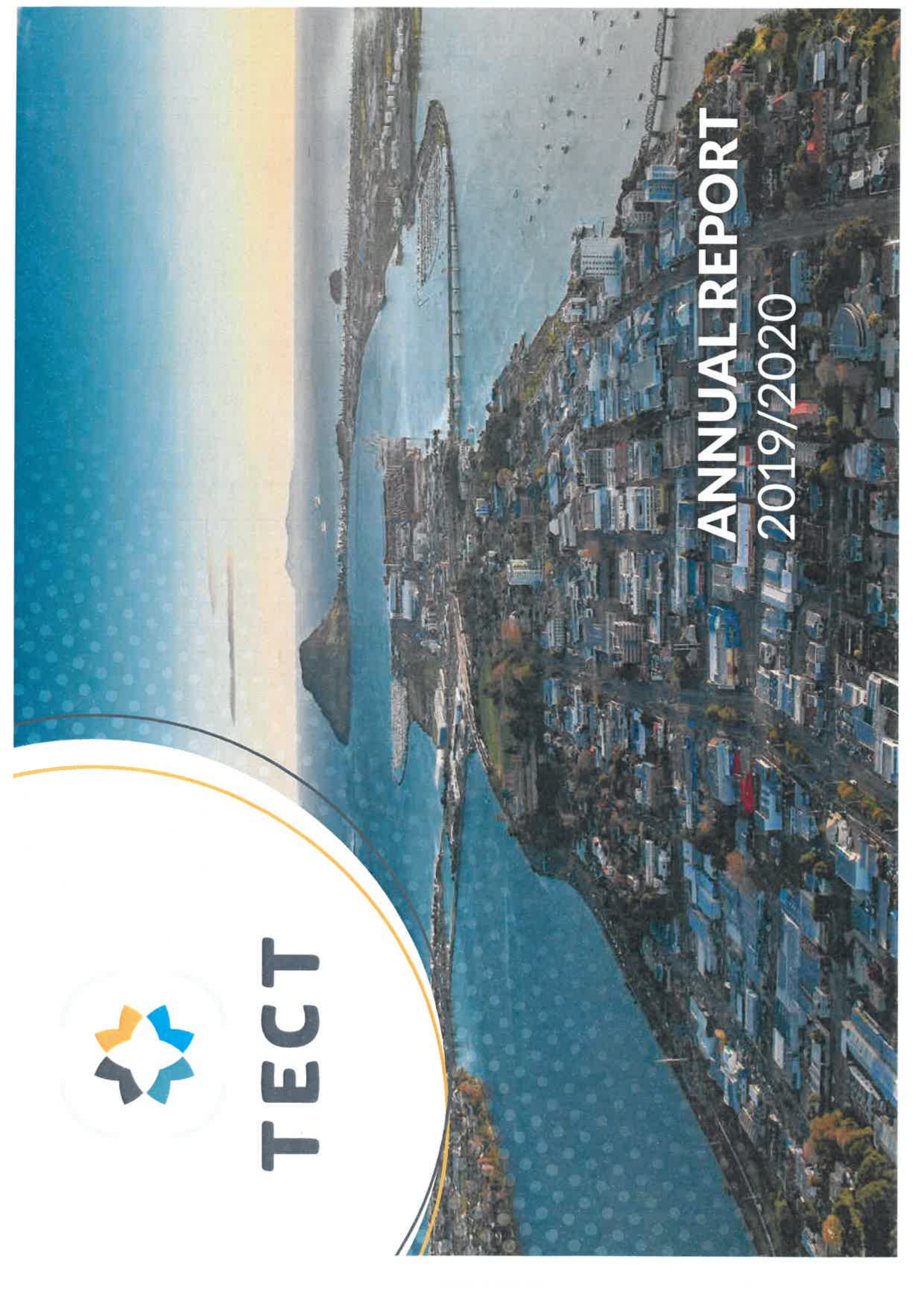






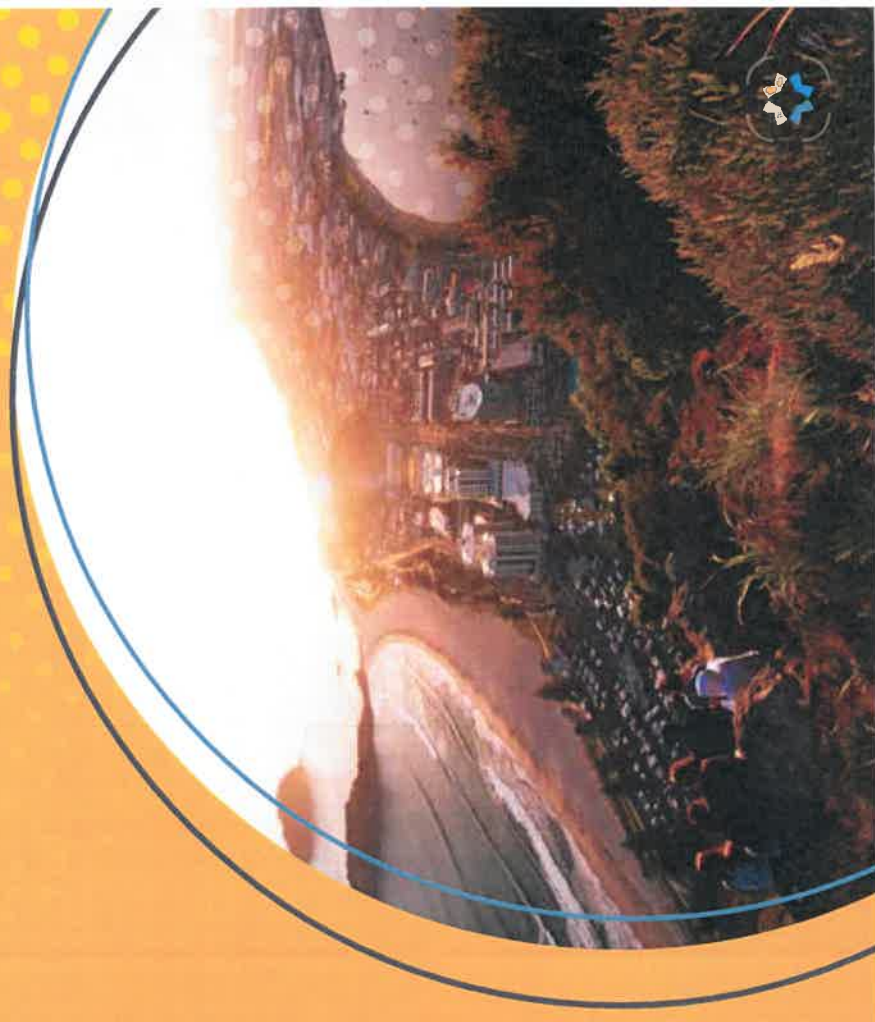
**TECT**

**ANNUAL REPORT  
2019/2020**

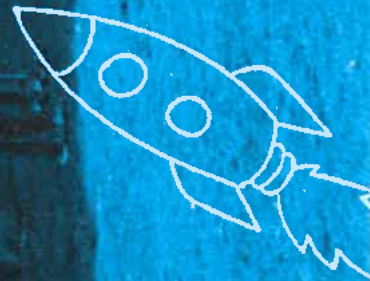


# CONTENTS

04	•	Trust Governance
05	•	Chairperson and General Manager's Report
09	•	COVID-19
10	•	Investment Profile
11	•	The Year at a Glance
13	•	Key Projects
15	•	Community Facilities Fund
16	•	Community Events Fund
17	•	Community Development Fund
18	•	Total Funding Approved
22	•	Rebate Payments
24	•	Financial Statements
26	•	Notes to Financial Statements
28	•	Auditor's Report



OVER 3000 GRANTS  
MADE SINCE 1993



# TRUST GOVERNANCE

TECT and TECT Charitable Trust operate under Deeds of Trust respectively dated 21 December 1993 and 27 March 2002. Provisions of the Electricity Amendment Act 2001 also impact upon Trust Governance.

TECT is governed by six trustees who are elected by beneficiaries for four-year terms. The terms of appointment of trustees are staggered so that three trustees retire every two years. The current trustees are Bill Holland (Chairperson), Natalie Bridges (Deputy Chairperson), Peter Blackwell, Amanda Sutcliffe, Mark Arundel and Tina Jennen. Trustees are responsible for managing TECT's assets for the benefit of qualifying beneficiaries.



## DIRECTORY AS AT 31 MARCH 2020

<b>Trustees</b>	<b>Auditor</b>
W Holland, Chairperson	Crowe NZ Audit
N Bridges, Deputy Chairperson	Partnership
M Arundel	
A Sutcliffe	<b>Solicitor</b>
P Blackwell	Sharp Tudhope
T Jennen	Tauranga
<b>General Manager</b>	<b>Accountant</b>
Wayne Werder	KPMG
	Tauranga

<b>Date of Commencement</b>	21 December 1993	
TECT	TECT Charitable Trust	27 March 2002
TECT Holdings Ltd	TECT Holdings Ltd	15 December 2006
TECT Property Ltd	TECT Property Ltd	22 March 2016

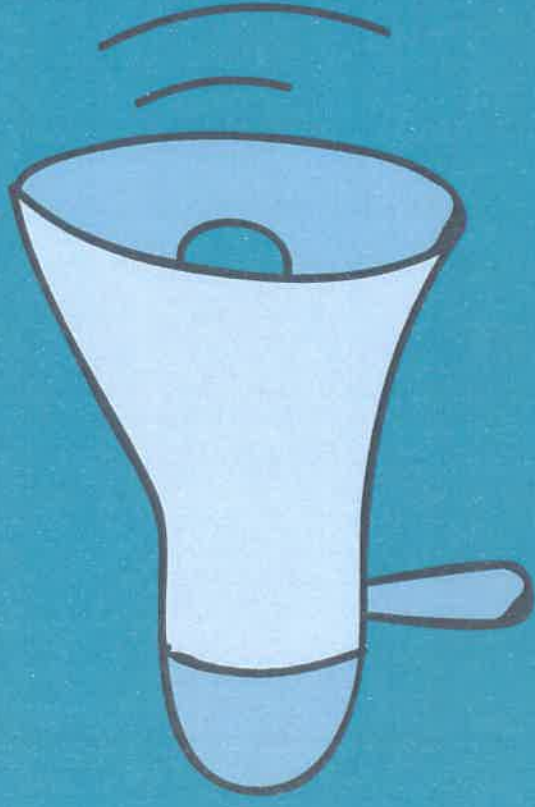
### Trust Deed Amendments

There were no changes to the Trust Deeds of the Tauranga Energy Consumer Trust or the TECT Charitable Trust between 1 April 2019 and 31 March 2020. The Trust Deeds are available to view on the trust's website under Trust Reports and Documents.

Natalie Bridges, Bill Holland, Peter Blackwell, Amanda Sutcliffe,  
Mark Arundel, Tina Jennen



# CHAIRPERSON AND GENERAL MANAGER'S REPORT



What a difference a few months make. As we all returned from our Christmas breaks, who would have contemplated that the start of 2020 would play out as it has. At the time of writing, the economic and social impact of COVID-19 is still unfolding, and the effect on the local and global economies is uncertain. The COVID-19 pandemic and its economic consequences has dominated the last part of the financial year.



Bill Holland  
Chairperson

TECT was created in 1993 when the community of the time decided to vest the proceeds of the sale of a power company in a trust. The trust deed was written to provide trustees with a range of methods by which they could deliver benefits to the Trust's beneficiaries. It is in times like we face with COVID-19 that we realise the benefit of such decisions and the ability to support our communities in times of need.

As we reflect on the previous financial year, it is hard not to be fully focused on COVID-19. However, there were a number of other notable events in the 2019-20 financial year.

### Response to COVID-19

COVID-19 has been unprecedented in terms of its impact on health, wellbeing, the economy and quite simply the way we go about daily life. The following pages provide more insight into the response from TECT as an organisation and the decisions made to support our community. Like most organisations, TECT was impacted, however, through the successful deployment of our business continuity plans and the previous decisions to diversify the investment base, this impact has been minimal, and the Trust has been able to maintain its planned distributions.

### Finance & Investment

The financial year ended with the coronavirus-triggered record market volatility in March. Approximately 40% of TECT's assets are held in a diversified portfolio of investments, and the remainder is held through a 26% shareholding in Trustpower, together valued at \$881M at 31 March 2020. The Trust continued to be supported by investment advisor Fidato Ltd, who provided strategic advice to assist the trustees in developing their investment policies and to help evaluate the performance of the diversification portfolio and the Trust's investment managers.

Governments and policymakers across the globe have announced unprecedented fiscal and monetary packages to provide some offset to the downturn. With a long-term focus, it is important that the Trust continues to take a long-term perspective. Arguably the best thing investors can do in periods like this is to stick to their investment principles and philosophy, and "stay the course" to have the best chance for investment success. The trustees are acutely aware of the risk of potentially selling part of the portfolio in a depressed market, crystallising current losses and giving up the benefits of eventual recovery in investment markets.



The key financial results for the year are as follows:

- Group profit before tax was \$52.6M. This compares to \$55.3M in the previous year.
- Group expenses were \$1.6M, slightly lower when compared to the previous year (\$1.8M).
- Group equity fell by \$50M to \$871M.
- The diversified portfolio had a negative return (-9.5%) driven largely by the market volatility in March. Since balance day (31 March 2020) the markets have largely rebounded to their pre-COVID-19 lockdown levels. However, they remain volatile, and there is still plenty to watch as markets continue to rally, political tensions increase, and unemployment rises.

## Distributions & Grantmaking

Despite the turmoil of COVID-19, the Trust was able to distribute a record \$55.9M in the financial year. Through this, TECT was once again able to support many worthy community initiatives and organisations this year.

In April 2019, TECT announced a one-off special distribution. The distribution offered a unique opportunity to consult on different ways the funds could be utilised to make the greatest impact in our community. Over 7,000 submissions were received from beneficiaries, with feedback showing 41% were open to increasing distributions towards community initiatives rather than the normal split between rebates and community grants. After reviewing the feedback, the decision was made to distribute an additional \$16.8M to eligible beneficiaries through a special rebate in July.

Alongside the rebate, TECT makes transformational grants that significantly contribute to the creation of a region from which not only current residents will benefit, but future generations. This intergenerational impact can be seen and measured throughout our community. From local sports clubs and annual community events, to major cycle tracks and the emergency services, our support aims to bring vibrancy, connectedness, growth and economic benefits to the region. This community support reaches from grassroots organisations and causes that would otherwise find it hard to qualify for funding

elsewhere, right through to transformational projects that equally need TECT to get off the ground.

To assist our community through the challenges of COVID-19, local funders TECT, Acorn Foundation, BayTrust and Tauranga City Council joined forces to work together on a response. This response aimed to help key Western Bay of Plenty community groups survive the impact of COVID-19. A three-phase approach was planned by the funders, with the first phase aiming to support groups facing immediate challenges created by COVID-19, the second phase to support the medium-term recovery, and the third phase to support the longer-term resilience and reinvention of the sector.

While life is still very uncertain regarding the pandemic, it is vital we look at what steps we can take now to ensure our recovery as a region. Not a recovery to life as it was before COVID-19, but a reimagined future; one where everyone in our community has a roof over their head, food on the table, time to care for their family, and the systems in place to support them.

The Western Bay's continued growth requires a major funder like TECT to keep up with the ever-increasing demand for amenities, community groups that support our wellbeing, and events that allow us to connect, learn and keep active. With the challenges of growth and changes in the population demographic, the needs of our community also continue to change, and it is our role to understand those needs to ensure the best use of our grant dollars.

It is humbling to see the amount of commitment and passion from those that work in the community sector and we thank all the wonderful community groups for their ongoing work.

The key distribution highlights for the year are as follows:

- The Trust received 240 applications and approved 231.
- A total of \$9.74M was distributed across TECT's five grant funds.
- \$46.8M was approved for distribution to beneficiaries via two rebate payments, and the transition away from physical cheques was successful.





## Governance & Management

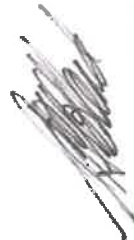
What COVID-19 has taught us is that the trustees will need to continually monitor future trends, opportunities, and threats as part of their duties to ensure the Trust is future-proofed in the ever-evolving world we live in.

It is about taking a long-term view. This includes embracing a systems mindset, supporting transformative visions, and encouraging collaboration, partnerships and new ways of working.

2020 will see the biennial election of trustees take place and the interest is once again high with 13 nominations received. The election will see the retirement of Amanda Sutcliffe and we all thank Amanda for her contribution along with the other trustees for their support, guidance and wisdom throughout the year.

The TECT management team continue to operate in a manner that is as efficient and effective as possible and responded professionally and at pace to the demands of COVID-19. The small team were able to work effectively through what has been an extremely challenging end to the financial year. We were also supported by a number of advisors who continue to provide specialist support when required. In 2019 the decision was made to move our accounting services to KPMG. This brought to an end a 25 year relationship with BDO who have made a significant contribution to the Trust, and in particular Fraser Lellman who acted as the Trust secretary for many years – we thank them for their service.

It is a privilege to work for the Trust and we all look forward to continuing to make a positive impact upon this region.



**Bill Holland**  
Chairperson



**Wayne Werder**  
General Manager

**Total Approved  
for Distribution**  
over the history of TECT since 1993

**\$562.8M**

**Direct**  
DISTRIBUTIONS

**\$440.8M**

**Grant**  
DISTRIBUTIONS

**\$122.0M**



Wayne Werder  
General Manager

# WORKING TOGETHER IN THE WAKE OF COVID-19

In December 2019, an outbreak of a new coronavirus disease, called COVID-19, was identified. The disease has since spread globally, resulting in an ongoing pandemic that has affected millions of people. The first case of COVID-19 in New Zealand was reported on 28 February 2020. To contain the disease, the country went into Alert Level 4 lockdown on 25 March; closing many facilities and instructing people to stay at home in their bubble. As we moved down the Alert Levels, restrictions were lifted as we collectively worked together to fight COVID-19.

COVID-19 has brought about countless changes; from how we work and interact, to how we travel and learn.

But COVID-19 has also led to a profound experience of community connection. We have seen so much good around us; from people collecting food for their elderly neighbours, to the quiet in the streets at the start of lockdown – the sound of an incredible joint effort to keep our physical distance and help stop the spread of the virus.

The pandemic has shown that our health and wellbeing as an individual is dependent on the health and wellbeing of our community as a whole. And to achieve that, we must work together, support one another, and find new ways to create a brighter future for ourselves, and the next generation, with the decisions we make today. We have all been in this together, and here at TECT we have had our role to play too.

In light of the lockdown, we identified three phases we needed to navigate through: the immediate need, the mid-

term support, and our longer-term approach. In terms of our community's immediate need, we established the Rapid Response Fund in collaboration with other local funders, to support community groups with increased demand.

From groups supporting those stuck in unsafe homes, to groups providing food for people who lost their job; we were pleased our collaborative effort was able to quickly get funds where they were needed, to support those who invariably suffered most from the pandemic.

The trustees met fortnightly via video conference to confirm how we could provide a variety of support, both with the rebate and with our funding.

It is no secret that the financial markets had been very volatile. Global share markets (including NZ) fell sharply as governments were forced to impose strict virus containment measures. However, there was a strong rally into the end of the March quarter as nations implemented relief packages and policies. Approximately 40% of TECT's asset base is a diversified portfolio which was exposed to the increase in volatility, as was our Trustpower investment. The entire TECT portfolio had a negative return in the 12 months to March 31. Fortunately, the portfolio had enough cash holdings to get us through a sustained period (without having to sell investments at deflated prices) and as such we continued with a business as usual approach and our 2020/21 Distribution Plan was signed off as planned. The trustees continue to maintain a long-term view consistent with the Trust's investment strategy, whilst continually monitoring the current volatility, and rebalancing the

portfolio when appropriate to ensure that exposures stay within their target ranges.

To support beneficiaries facing economic struggles, the trustees also decided to pay out half of the July rebate early in May. While the long-term impact of COVID-19 remains unknown, our plan is to remain responsive, flexible, and fair.

While the pandemic has brought about many changes, TECT is still here to support our community. The spirit of the original trust deed was to ensure the proceeds of TECT's investments enhance the wellbeing of the Trust's current and future beneficiaries in the Western Bay of Plenty, both direct through the rebate, and indirectly through the grants programme. The indirect benefits are equally important at a time like this and are helping those disproportionately affected by this pandemic such as the elderly, and those unwell, unsafe or lacking food

or shelter. The pandemic is something none of us could have predicted, but our community's compassion and desire to help one another has remained strong, and has in fact, become stronger.

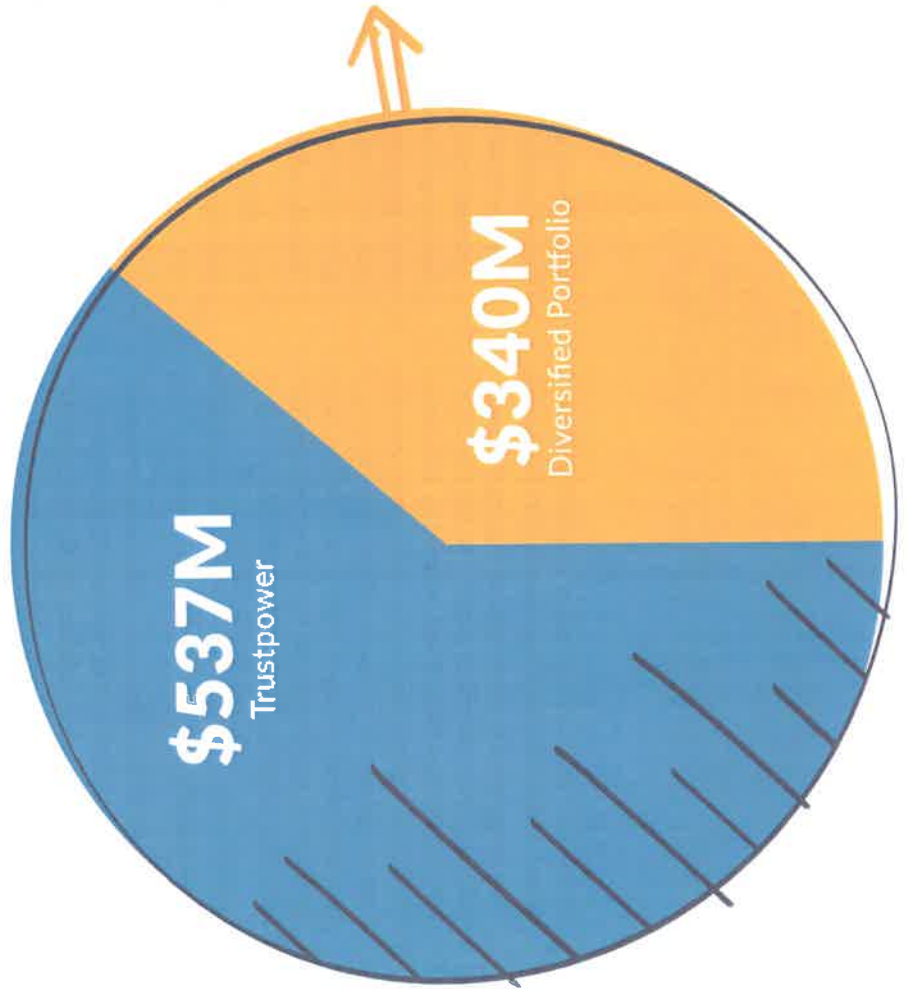
Be kind,  
stay home,  
save lives.



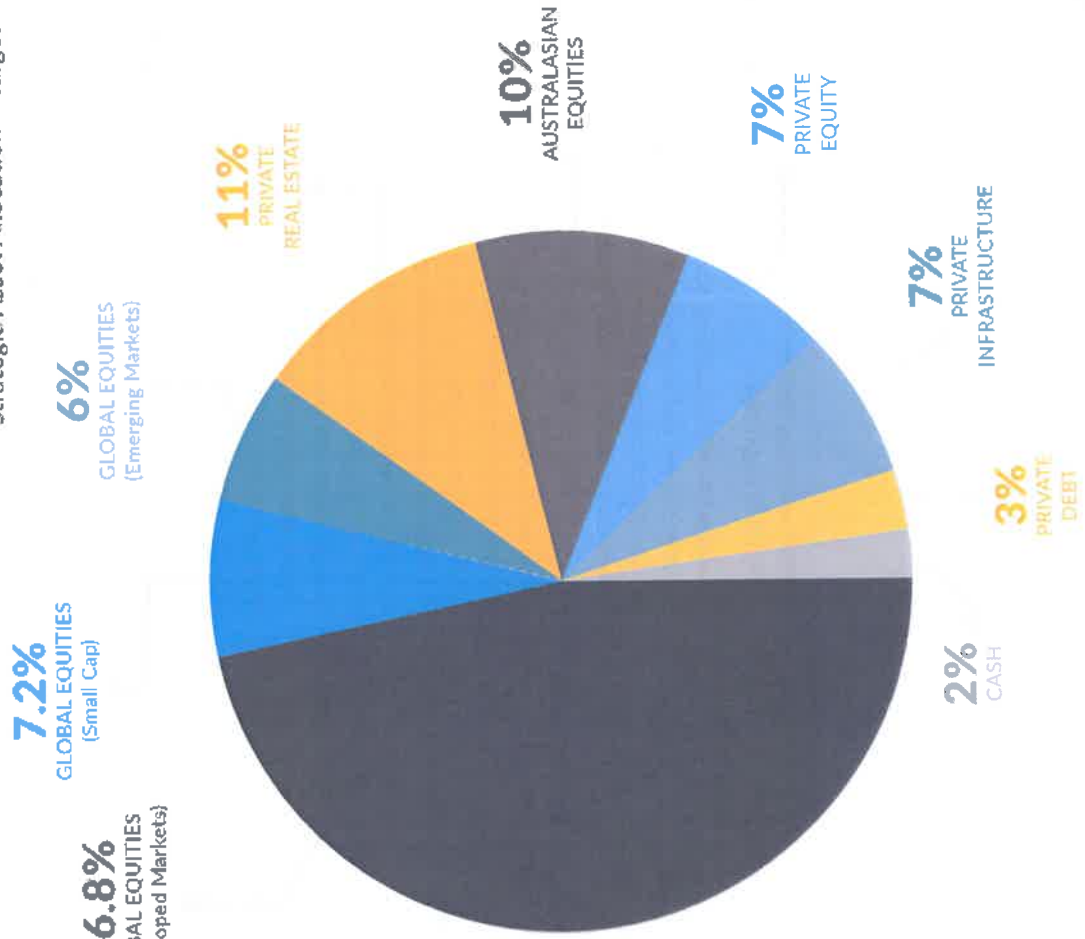
New Zealand Government

# INVESTMENT PROFILE

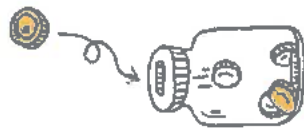
**Total Assets**  
as at 31 March 2020



**Diversified Portfolio**  
Strategic Asset Allocation – Target



# THE YEAR AT A GLANCE



**\$871 million**  
Value of Trust Fund  
as at 31 March 2020



**\$54.4 million**  
Net Profit Before Tax



**240** Applications  
**231** Approved

**Total of \$55.9 million**  
distributed this financial year



**\$9.74 million**  
total grants **APPROVED**



**\$802,264**  
Catalyst for Change



**\$2,706,626**  
Community Facilities



**\$3,922,294**  
Community Development



**\$812,880**  
Community Events



**\$1,500,000**  
Iconic Projects





# KEY PROJECTS AND FUNDING



# KEY PROJECTS



## BAY CONSERVATION ALLIANCE AND MEMBER GROUPS

A new collaborative funding application, facilitated by Bay Conservation Alliance, saw \$300,000 in TECT funding donated to eight community conservation groups including Bay Conservation Alliance. It's important that we support our environment and reconnect people with nature. We are proud to play a part in protecting this beautiful region that we are so lucky to live in.



## BAY OVAL

TECT has supported the Bay Oval since 2010, with funding contributing to the development of the cricket oval, pavilion, LED lighting and other upgrades to enhance the spectator experience. As the largest single capital funder of the facility, TECT has contributed \$2.5 million; ensuring the Bay Oval will continue to provide its many social and economic benefits to the region for years to come.

## TECT RESCUE HELICOPTER

TECT committed another three years of support towards the TECT Rescue Helicopter, providing a level of comfort and certainty for the service to continue their life-saving work in our community. The service, which has been operating in our region for 20 years, ensures every one of us can get home safe in an emergency.



# KEY PROJECTS

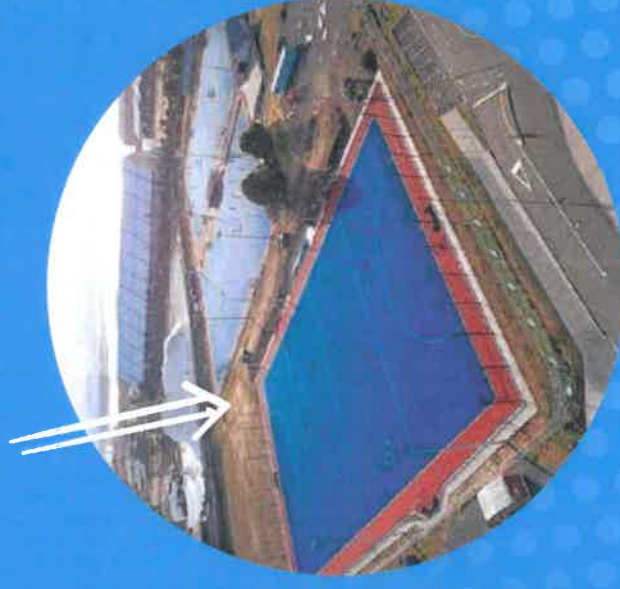
## TERTIARY CAMPUS SCHOLARSHIPS

As key funders of the Tauranga Campus development, TECT, Bay of Plenty Regional Council and Tauranga City Council supported the Tauranga Tertiary Campus Charitable Trust to fund three scholarships ranging in value from \$1,000 to \$23,000 for 20 students. Through these scholarships we hope to make tertiary education more accessible to our local community, encouraging continued education and supporting excellence.



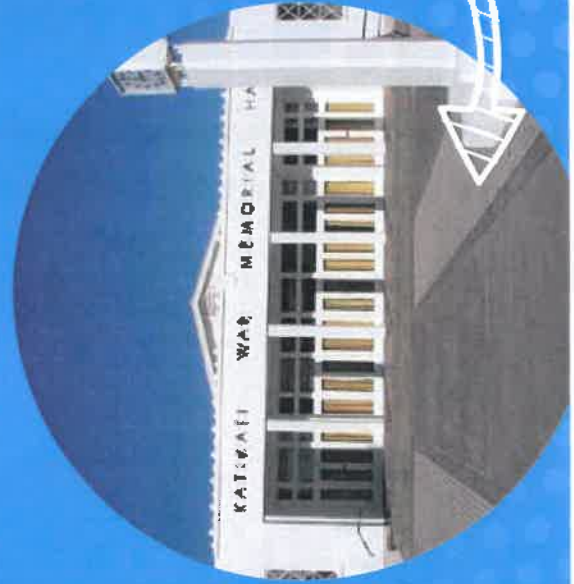
## TAURANGA HOCKEY

TECT funding was sought to develop a third full sized water-based artificial hockey turf at the Tauranga Hockey Centre. With increasing player numbers, the existing two turfs did not adequately provide for training and tournaments, leading to turf unavailability and excessively long days for competition. With a TECT grant of \$400,000, the new turf was finished in early 2020, providing additional turf capacity of 54 hours per week. TECT has contributed over \$1.2 million towards the facility over the years.



## KATIKATI MEMORIAL HALL AND TE PUNA MEMORIAL HALL

Memorial Halls not only preserve our heritage, but provide a space for our community to gather and enjoy events, classes, functions and more. With TECT funding of \$200,000 the Te Puna Memorial Hall could be rebuilt. With TECT funding of \$100,000, Katikati Memorial Hall's entranceway was upgraded to improve safety and accessibility for all.



# COMMUNITY FACILITIES FUND

34 GRANTS MADE • TOTAL AMOUNT \$2,706,626

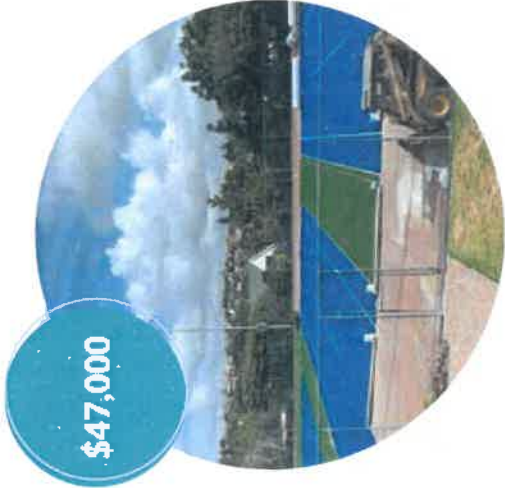


\$200,000

## NGAMUWAHINE LODGE

### LAND PURCHASE

"We are so grateful for TECT's support in helping us purchase the land that the Lodge sits on, including additional land, which will help us cater for more students and visitors. Since 2001 TECT has contributed \$1 million in funding towards our Trust – ensuring we can provide a fantastic facility for Western Bay children and visitors to get active, challenge themselves and have fun."



\$47,000

## OTUMOETAI TENNIS CLUB

### TURF RESURFACING

"TECT's generous donation allowed us to upgrade all 8 of our court turfs which were showing noticeable signs of wear and tear after 16 years of use. We are so appreciative of the support which will ensure our whole community can enjoy the facilities for many years to come."



\$30,000

## PILLANS POINT SCHOOL

### OUTDOOR GARDEN

"Thank you TECT for your support. The \$30,000 grant helped us create a water play area, kitchens, landscaping and gardens for the children to enjoy and learn about the land, flora and fauna. The children also helped with the planting process which was another fantastic learning opportunity."





# COMMUNITY EVENTS FUND

40 GRANTS MADE • TOTAL AMOUNT \$812,880



\$30,000

## STEM WANA TRUST

TAURANGA STEM FESTIVAL (STEMFEST)

"We are so grateful for TECT's grant of \$30,000. It meant we could provide an exceptional world-class experience for thousands of young people and their families that was free to attend, and enabled us to bring in some truly inspirational exhibitors that wowed the crowd."



\$30,000

## PUSHING ARTS IN NZ TRUST

STREET PRINTS MAUAO FESTIVAL

"Thank you TECT for supporting our vision, to bring beautiful art to the public. We had international and local artists create 20 large-scale murals, held art workshops and ran a youth mentoring programme, all to bring people together, build connections and add some beauty to our streets."



\$110,000

## AIMS GAMES TRUST

AIMS GAMES

"TECT has been a long-standing and hugely important contributor to the Anchor AIMS Games. That support means we are able to reach more people around New Zealand and globally, while each year providing a professional, world-class event which creates long-lasting memories for our athletes."



# COMMUNITY DEVELOPMENT FUND

149 GRANTS MADE • TOTAL AMOUNT \$3,922,294



\$20,000

## THE SEARCH PARTY CHARITABLE TRUST

CREATING A THRIVING AND CONNECTED  
TE PUKE

"We are so thankful for TECT's funding – it shows a level of trust and understanding in what we are doing, bringing our community together to socialise, educate, collaborate, maintain properties, gardens and more."



\$12,500

## MOCKINGBIRD

SUPPORTING NEURODIVERSE CHILDREN  
AND THEIR FAMILIES

"We are really grateful to have received funding from TECT, it has given us the security that any household would need to run. When a flower doesn't bloom, you fix the environment in which it grows, not the flower. Thanks to TECT and other funders support, we are able to provide an environment where these children can grow."



\$40,000

## FILM BOP

ATTRACTING SCREEN PRODUCTIONS  
TO THE BAY

"TECT's ongoing support has enabled us to grow in so many ways; we're building relationships with key players in the industry, facilitating increased productions in the region and continually upskilling local filmmakers. We really value your support in helping not only our vision to happen, but also to help realise the visions of the talented filmmakers from across the region too."



# TOTAL FUNDING APPROVED

## COMMUNITY FACILITIES

	Approved
Arataki School	\$30,000
Bay Oval	\$200,000
Behlehem Baptist Church	\$150,000
BOP Classic Aircraft Trust	\$125,000
BOP Rugby Union	\$200,000
Bowls Matua	\$100,000
Greenon Village School	\$19,800
Kaitiaki Memorial Hall	\$100,000
Maungatapu Kindergarten	\$11,270
Mt Maunganui Pump Track Society	\$86,250
Ngemuwahine Lodge Trust	\$200,000
Otumoetai Feels Rugby League Club	\$4,259
Otumoetai Tennis Club Inc.	\$47,000
Paengaroa Kindergarten	\$15,739
Papamoa Surf Rescue Base Trust	\$100,000
Pillans Point School	\$30,000
Pyes Pa School	\$25,000
Stepping Stone Ministries	\$12,947
Tauranga Baptist Church - Gresham Court	\$10,000
Tauranga BMX Club	\$13,726
Tauranga Model Aircraft Club	\$14,000
Tauranga Motorcycle Club	\$45,000
Tauranga Pistol Club	\$4,223
Tauranga Sports Club	\$65,253
Tauranga Squash Club	\$200,000
Te Kura Kaupapa Maori o Te Matai	\$40,000
Te Puke Cricket Club	\$19,285
Te Puke High School	\$7,874
Te Puke Sports and Recreation Club	\$120,000
Te Puke Squash Club	\$30,000
Te Puna Hall Committee	\$200,000
Te Puna School	\$30,000
TECT Park	\$300,000
Whaloranga Trust	\$120,000
	<b>\$2,706,626</b>

## COMMUNITY EVENTS

	Approved
AIMS Games Trust	\$110,000
AIMS Games 2019	\$110,000
Bay of Plenty Rugby Union	\$45,000
2019 National Sevens	\$45,000
BOP Dragon Boat Club	\$1,500
Dragon Boat Regatta 2019	\$1,500
BOP Symphonia	\$3,500
2019 Concerts	\$3,500
Get Kids Active Charitable Trust	\$5,000
Junior Tough Guy & Gal Challenge Tauranga	\$5,000
GymSports NZ	\$75,000
Pacific Rim Gymnastics Championships	\$75,000
Hockey NZ	\$25,000
NHL Tournament	\$25,000
Holy Trinity Tauranga	\$1,000
Carols on the Waterfront	\$1,000
Indian Ink Trust	\$2,500
Venue Hire for Production of Mrs Krishnan's Party	\$2,500
Kaitiaki Open Air Art	\$15,000
Open Air Arts Festival 2019	\$15,000
Kaupapa Maori Event Fund	\$20,000
Kaupapa Maori Event Fund	\$20,000
Mt Festival Charitable Trust	\$35,000
Festival of Multisport 2020	\$35,000
Multicultural Tauranga	\$1,200
Multicultural Festival	\$1,200
Multicultural Tauranga	\$6,500
New to the Bay Expo	\$6,500
Ngati Hangarau Charitable Trust	\$7,500
Marie Wharenui 50th Anniversary	\$7,500
NZ China Friendship Society	\$5,000
Chinese New Year Festival	\$5,000
NZ Country Music Star Awards	\$4,000
2019 NZ Country Music Star Awards	\$4,000
NZ Garden & Arts Festival Trust	\$100,000
Garden & Arts Festival 2020	\$100,000
One Love Charity	\$1,700
Diwali Festival	\$1,700
Orchestras Central Trust	\$1,500
Opus Concert 2019	\$1,500
Orif NZ Aotearoa (ONZA)	\$1,000
Marimba Festival	\$1,000
Oriana Singers	\$2,200
2019 concerts	\$2,200
Pasifika in the Bay	\$4,000
Pasifika Festival	\$4,000
Priority One	\$30,000
Groundswell Festival of Innovation	\$30,000
Pushing Arts in NZ Trust	\$30,000
Street Art Festival	\$30,000
Runanga Ngai Tamawharua Inc.	\$5,000
Whanu Well Day	\$5,000
Scholars Baroque Aotearoa Inc.	\$2,000
Concerts 2019	\$2,000
STEM Wana Trust	\$30,000
STEM Festival 2019	\$30,000
Tarnished Frocks & Divas	\$40,000
Fashion Show 2019	\$40,000
Tauranga City Basketball	\$15,000
Masters Tournament & National League	\$15,000
Tauranga Jazz Society	\$65,000
Jazz Festival 2020	\$65,000
Tauranga Musica Inc.	\$2,500
2019 concerts	\$2,500
Tauranga Performing Arts Society	\$14,000
Performing Arts Festival 2019	\$14,000
Tauranga Primary Schools Music Festival	\$2,500
Annual Music Festival	\$2,500
Tauranga Society of Artists	\$2,000
Art Exhibitions	\$2,000



# TOTAL FUNDING APPROVED

## CONT. COMMUNITY EVENTS

	Approved
Tauranga X Charitable Trust	\$10,000
Te Atarua Youth Trust	\$27,280
Te Puke A&P Show	\$1,500
The Tauranga Community Trust	\$25,000
Urban Dance Youth Trust	\$15,000
Youth Philharmonic Tauranga	\$3,000
	<b>\$812,880</b>

## COMMUNITY DEVELOPMENT

	Approved
AARC Wildlife Trust	\$9,225
Age Concern Tauranga	\$25,000
Alzheimer's Society Tauranga Inc.	\$45,000
Anxiety NZ Trust	\$7,250
Aongatete Forest Restoration Trust	\$27,680
Aotahaia NZ Charitable Trust	\$8,600
Autism NZ Inc. Tauranga	\$5,000
Avenues Kindergarten	\$4,395
Bay Conservation Alliance	\$118,000
Bay of Plenty Rugby Union	\$20,000
Bay of Plenty Therapy Foundation	\$25,000
Bay Twisters	\$25,662
Baywide Community Law	\$40,000
Bethlehem College	\$13,079
Bethlehem Pottery Club	\$8,983
BOP Classic Aircraft Trust	\$50,000
BOP Down Syndrome Association	\$25,000
BOP Sailing Academy Trust	\$5,000
Brain Injured Children Trust	\$1,242
Brave Hearts	\$12,000
Breast Cancer Support Trust	\$35,000
Cancer Society Waikato/BOP	\$35,000
CCS Disability Action BOP	\$20,000
Citizens Advice Bureau	\$6,000
Coastguard Eastern Region	\$40,000

Complex Chronic Illness Support Inc.	Educating & supporting people with hidden illnesses	\$27,500
Cool Bananas Youthwork Trust	Values-based school programme	\$15,000
Croquet Mt Maunganui	Greens mower	\$20,000
Dress for Success	Helping disadvantaged women into employment	\$10,000
EEEST	ICT equipment	\$2,990
EmpowermentNZ	Social support services in Te Puke	\$30,000
Envirohub	Delivering projects that support a sustainable future	\$40,000
Epilepsy Association of NZ	Educating & supporting people with epilepsy	\$5,000
EVolocity	Electric vehicle building initiative in school	\$7,500
Family Link	Family connections programmes	\$10,565
Film BOP	Attracting screen productions to the Bay	\$40,000
Gate Pa School	ICT equipment	\$2,780
Gender Dynamix NZ	Supporting transgender people	\$10,000
Get Smart Tauranga Trust	Drug & alcohol counselling	\$25,000
Good Neighbour Aotearoa Trust	Food rescue & neighbourhood projects	\$50,000
Greenpark School	ICT equipment	\$33,827
Greenon Bible Church	Heat pumps and PA system	\$4,442
Greenon Kindergarten	Car seats	\$2,344
Grief Support Services	Grief counselling	\$35,000
Growing Through Grief Te Puke	Delivery of grief programme to young people	\$2,500
Halberg Foundation	Trallider	\$7,250
Hanner BOP Charitable Trust	ICT equipment	\$10,235
Harbourside Netball Association	Performance Pathway Programme	\$20,000
He Kaupapa Kotahitanga Trust Tauranga	Operating Awihina House women's shelter	\$40,000
Headway Brain Injury	Supporting & educating for those with a brain injury	\$10,000
Homes of Hope Charitable Trust	Foster care for high needs children	\$150,000
House of Science	Providing schools with science resource kits	\$50,000
Huria Trust	Health, social service and educational programmes	\$20,000
Kamei School	ICT equipment	\$5,711
Kaiti Kaitiaki	Supporting community development	\$30,000
Kaitiaki Community Resource Centre	Information, support & activity centre operations	\$30,000
Kaitiaki RSA & Citizens Club	Security lighting & upgraded security camera system	\$4,348
Keynotes Inc.	Singing performances	\$1,000
Kidz Need Dadz Charitable Trust	Strengthening father-child relationships	\$15,000
Life Education Trust	Health & wellbeing programme in schools	\$35,000
Live for More Charitable Trust	Youth development surfing programme	\$50,000



# TOTAL FUNDING APPROVED

## CONT. COMMUNITY DEVELOPMENT

Approved			
Maketu Ongatoro Wetland Society	Conservation & education initiatives (2-year funding)	\$65,000	
Maketu Teiapure Charitable Trust	Maketu Community Coordinator role	\$10,000	
Maketu Volunteer Coastguard	Vessel maintenance for water rescue	\$10,000	
Male Survivors BOP	Supporting male survivors of trauma & sexual abuse	\$20,000	
Maungatapu School	ICT equipment	\$10,956	
Merivale Community Garden	Lockable container for tool storage	\$1,000	
Merivale Community Inc.	Social service & youth engagement programmes	\$40,000	
Mockingbird Inc.	Supporting families of children with spectrum disorders	\$12,300	
Mt Maunganui Aquatic Centre Trust	Pool running costs	\$15,000	
Mt Maunganui Bridge Club	Air conditioning	\$6,217	
Mt Maunganui College	ICT equipment	\$45,000	
Mt Maunganui Intermediate School	ICT equipment	\$22,000	
NZ Blue Light Ventures	Driver Navigator programme	\$50,000	
Omokoroa Community Church	Audio visual equipment	\$3,529	
Otanevaipuku Kiwi Trust	Carpark extension	\$14,152	
Otumoetai Intermediate School	ICT & AV equipment	\$40,000	
Otumoetai Kindergarten	ICT equipment	\$3,000	
PET Charitable Trust	Personal care kits for hospital & Waiuna Hospice patients	\$5,000	
Pacific Island Community Trust	Social support for Pacific Island community	\$15,889	
Paengaroa School	ICT equipment	\$17,400	
Papamoa Beach Surfcasting Club	Weighing scales and gazebo	\$320	
Papamoa Kindergarten	Solar panels	\$8,861	
Papamoa Primary School	ICT equipment	\$28,320	
Parafed BOP	Disability sporting programmes & 2020 festival	\$30,000	
Parent to Parent Coastal BOP	Supporting parents of children with special needs	\$10,000	
Parenting Place Charitable Trust	Youth and parenting programmes	\$15,000	
Parkinsonism Society	Parkinson's community educator service	\$15,000	
People First NZ	Empowering & supporting people with learning disability	\$1,000	
Phillips Search & Rescue Trust	TECT Rescue Helicopter (3-year funding)	\$600,000	
Priority One	Instep programme	\$30,000	
Project Litefoot Club	LiteClub programme	\$8,167	
Recreate NZ	Providing social opportunities for disabled youth	\$12,000	
Rhodesian Services Association Inc.	Museum operations	\$5,000	
Road Safety Education	Driver safety programme	\$5,000	
Ronald McDonald House	Security upgrade for Grafton Mews House	\$15,378	

Royal NZ Plunket Society	Community programmes supporting child development	\$25,000	
Saliability Tauranga Trust	Boat purchases	\$20,643	
Sport Bay of Plenty	Water safety strategy	\$25,000	
Sport Bay of Plenty	GO-fit programme	\$60,000	
St George's Gate Pa	Heat pumps	\$3,466	
St Peters House	Counselling & social work services	\$35,000	
St Vincent De Paul	Van purchase for Full Stop food delivery programme	\$10,000	
Starjam Charitable Trust	Dance & music classes for disabled youth	\$4,800	
Stroke Foundation of NZ	Supporting people affected by Stroke	\$25,000	
Summer Shakespeare Tauranga Trust	Production costs for Loves Labours Lost	\$2,000	
Surf Life Saving NZ	Regional lifeguard services	\$20,000	
Sustainability Options	Healthy Homes initiative	\$13,000	
Taumatā School	ICT equipment	\$17,500	
Tauranga (BOP) Hearing Association	Supporting people with hearing difficulties	\$8,840	
Tauranga Art Gallery Trust	Community education & exhibitions	\$50,000	
Tauranga Bowling Club	Floodlighting for evening bowls	\$14,600	
Tauranga Bridge Club	Lighting	\$3,158	
Tauranga City Council	Youth voting campaign	\$5,000	
Tauranga Community Foodbank	Providing food parcels to families and people in need	\$30,000	
Tauranga Men's Shed	Dust collector	\$17,779	
Tauranga Repertory Society	Lighting upgrade	\$10,000	
Tauranga Synchronised Swimming	Sound system	\$3,218	
Tauranga Volunteer Coastguard	Tauranga water rescue services & equipment	\$20,000	
Tauranga Water Polo	Fostering and encouraging water polo	\$10,000	
Tauranga Youth Development Team	Supporting youth with projects and events	\$10,000	
Tauriko School	ICT equipment	\$20,000	
Te Manu Toroa Trust	Providing health, welfare & social services	\$47,000	
Te Puke Baptist Church	Christians Against Poverty budgeting programme	\$5,000	
Te Puke Gymsport	10m Air Track extension	\$1,895	
Te Puke Rifle Club	Electronic targets	\$7,209	
Te Puke Tennis Club	Dishwasher	\$479	
Te Whakakaha Trust	Equipment purchases for pest eradication	\$15,417	
The Adastrā Foundation	Sport & performing arts scholarships for youth	\$10,000	
The Boys Brigade	ICONZ mentoring programme for boys	\$15,000	
The Incubator Hub	Growing a strong arts culture (2-year funding)	\$140,000	
The Scout Association of NZ	Programme delivery in the Western Bay of Plenty	\$10,000	



# TOTAL FUNDING APPROVED

## SOFT COMMUNITY DEVELOPMENT

	Approved
The Search Party Charitable Trust	\$20,000
The Tauranga Seagull Club Inc.	\$5,407
The Tomorrow Project Inc.	\$5,000
Tipu Skills for Life Charitable Trust	\$10,000
Triathlon Tauranga Inc.	\$26,000
Upper Central Zone NZ Rugby League	\$10,000
Uretawa Estuary Managers	\$46,125
Victim Support Tauranga	\$20,000
Volleyball Bay of Plenty Inc.	\$10,000
Volleyball New Zealand	\$15,000
Volleyball New Zealand	\$5,000
Volunteering Bay of Plenty	\$40,000
Volunteering Bay of Plenty	\$15,000
WBOP Neighbourhood Support	\$10,000
Western Bay Cadet Unit	\$3,550
Western Bay Heritage Trust	\$20,000
Western Bay Wildlife Trust	\$4,401
Whakamarara Community Inc	\$7,200
Whakamarara School	\$5,000
Youth Development Trust WBOP	\$210,000
Youth Encounter Ministries Trust	\$20,000
Youth Search & Rescue Trust	\$35,000
	<b>\$1,923,394</b>

## CATALYST FOR CHANGE

SocialLink	Community insights lab	Approved	\$400,000
Sustainability Options	BOP Healthy Housing Programme (3-year funding)		\$550,000
Tauranga Community Health Trust	Tai Ora Whanau		\$152,264
			<b>\$802,264</b>

## ICOMAC PROJECTS

Bay Oval	Indoor training facility, pavillion extension, public toilets	Approved	\$4,500,000
			<b>\$4,500,000</b>



The tables on pages 18 - 21 include all community organisation funding approved by trustees during the year. Some grants may lapse because grant conditions are not met or because funding is no longer required by the organisation. Because of this, the total funding approved may differ from the amount shown as approved in the Financial Report. Total Distributions Approved per the Financial Report also includes direct beneficiary distributions.

# REBATE PAYMENTS

## SPECIAL REBATE

In April 2019, TECT announced a one-off special distribution. The distribution offered a unique opportunity to consult on different ways the funds could be utilised to make the greatest impact in our community.

Over 7,000 submissions were received from beneficiaries, with feedback showing 41% were open to increasing distributions towards community initiatives rather than the normal split between rebates and community grants. After consideration of the feedback, \$295 was paid to each eligible beneficiary (\$16.8M total).

## CHANGE TO TWO REBATE PAYMENTS

In 2019 a new rebate payment approach was implemented, giving TECT beneficiaries the option to receive their rebate direct into their bank account. Given the success and positive feedback from this approach, the trustees made the decision to implement this approach permanently. This provided the opportunity to make two payments per year.

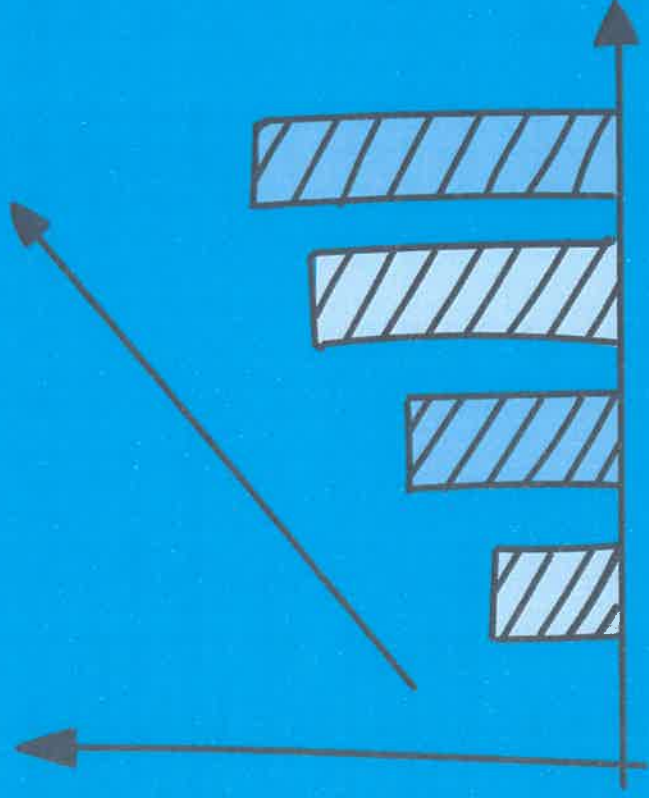
From 2020 onwards, the rebate will be paid in two instalments; 50% in July, and 50% in early December.



**50% IN JULY**  
**50% IN DECEMBER**



# FINANCIAL STATEMENTS AND NOTES





# FINANCIAL STATEMENTS

Summarised annual report  
for the year ended 31 March 2020

## Statement of profit or loss and other comprehensive income for the year ended 31 March 2020

	2020	2019
Revenue		
Dividends	41,100,631	49,902,658
Distributions received	11,332,303	5,385,593
Interest	1,683,255	1,717,594
Other income	142,797	171,935
<b>Total Revenue</b>	<b>\$54,258,985</b>	<b>\$57,177,780</b>
Expenses		
Accounting & financial consultancy	92,933	90,673
Consumer related expenses	320,195	235,727
Depreciation expense	60,770	24,200
Investment expenses	130,726	160,112
Legal & advisory expenses	107,888	48,038
Trustee expenses	180,786	187,719
Other administration expenses	666,655	685,047
Total Administrative Expenses	1,559,953	1,381,516
Finance Expenses		
Effective interest adjustment of interest free loans	(75,438)	14,621
Interest expense	9	58,729
Net change in fair value of derivative	-	337,013
Other finance expenses	145,361	51,291
Total Finance Costs	69,933	461,654
<b>Total expenses</b>	<b>\$1,629,886</b>	<b>\$1,843,170</b>
<b>Profit before taxation</b>	<b>52,629,099</b>	<b>55,334,610</b>
<b>Tax expense</b>	<b>(1,845,167)</b>	<b>(2,267,626)</b>
<b>Profit after tax</b>	<b>\$54,474,266</b>	<b>\$57,602,236</b>
Other comprehensive Income	Items which will be classified to Profit & Loss on certain conditions being met	
Deferred tax	17,364,777	(16,795,403)
Net profit on sale of Tilt Renewable shares	-	37,369,421
Valuation gain/(loss) on investments	(66,870,951)	101,595,916
<b>Total other comprehensive income</b>	<b>\$(49,506,174)</b>	<b>\$122,169,934</b>
<b>TOTAL COMPREHENSIVE INCOME</b>	<b>\$4,968,093</b>	<b>\$179,772,170</b>

## Statement of changes in equity for the year ended 31 March 2020

	2020	2019
Accumulated Final Profits		
Balance at the beginning of the year	245,978,588	217,070,595
Deferred Tax written back on sale of Tilt Renewables	-	568,372
Profit after Taxation	54,474,266	57,602,234
Net profit on sale of Tilt Renewables shares	-	37,369,421
Transfer from Fair Value Reserve - Tilt Renewables	-	(31,116,246)
Consumer distributions/grants written back	168,871	184,210
Transfer from Reserve for distributions	(59,420,000)	(35,700,000)
<b>Balance at end of year</b>	<b>\$241,201,725</b>	<b>\$245,978,588</b>
Fair Value Reserves		
Balance at the beginning of the year	671,775,899	556,427,512
Current year revaluation - Trustpower shares	(17,614,556)	84,987,008
Current year revaluation - Tilt Renewables shares	-	3,274,076
Transfer to Accumulated profits	-	34,116,246
Current year revaluation - Investment portfolios	(49,256,395)	13,335,831
Deferred tax on Fair Value Movements - Trustpower shares	17,364,777	(17,364,777)
<b>Balance at end of year</b>	<b>\$622,269,725</b>	<b>\$671,775,899</b>
Reserves for Distributions		
Balance at the beginning of the year	3,742,329	2,710,161
Allocated - Annual Distribution Plan	59,420,000	35,700,000
Net transfers to provisions & payments	(55,606,404)	(34,667,832)
<b>Balance at end of year</b>	<b>\$7,555,926</b>	<b>\$3,742,329</b>
<b>TOTAL EQUITY AT THE END OF THE YEAR</b>	<b>\$871,027,375</b>	<b>\$921,496,815</b>

These statements are to be read in conjunction with the Notes to the financial statements.

# FINANCIAL STATEMENTS

Summarised annual report  
for the year ended 31 March 2020

## Statement of financial position as at 31 March 2020

	2020	2019
<b>Current assets</b>		
Cash and cash equivalents	2,176,591	6,855,407
Trade and other receivables	224,781	960,743
Other investments	19,000,000	93,000,000
<b>Total current assets</b>	<b>21,401,371</b>	<b>\$100,816,151</b>
<b>Non current Assets</b>		
Investment portfolio	307,184,899	278,486,136
Investment property	10,656,502	-
Loans to consumer organisations	206,877	299,439
Property, plant and equipment	276,788	9,978,874
Deferred tax	4,125,314	-
Shares in Trustpower	536,824,563	554,439,119
<b>Total non-current assets</b>	<b>859,274,942</b>	<b>843,203,568</b>
<b>Total assets</b>	<b>\$880,676,313</b>	<b>\$944,019,719</b>
<b>Current liabilities</b>		
Trade and other payables	202,490	149,526
Provision for distributions	9,446,448	7,288,750
<b>Total current liabilities</b>	<b>9,648,938</b>	<b>7,438,276</b>
<b>Non current liabilities</b>		
Deferred tax	-	15,084,630
<b>Total non current liabilities</b>	<b>-</b>	<b>15,084,630</b>
<b>Total liabilities</b>	<b>\$9,648,938</b>	<b>\$22,522,906</b>
<b>Net assets</b>	<b>\$871,027,375</b>	<b>\$921,496,815</b>
<b>Equity</b>		
Reserves for distribution	7,555,923	3,742,329
Fair value reserve	622,269,725	671,775,899
Accumulated profits	241,201,725	245,978,588
<b>Total equity</b>	<b>\$871,027,375</b>	<b>\$921,496,815</b>

## Statement of cashflows for the year ended 31 March 2020

	2020	2019
<b>Cash flows from operating activities</b>		
Interest, dividends and other investment receipts	53,813,079	50,712,201
Distributions received and other income	296,699	5,557,528
Payments to suppliers and Trustees	(1,706,873)	(1,425,685)
Interest paid	-	(58,729)
<b>Net cash from operating activities</b>	<b>52,402,905</b>	<b>54,785,315</b>
<b>Cash flows from investing activities</b>		
Proceeds and costs associated from the sale of Tilt Renewable shares	-	190,786,616
Cash flows from portfolio investments	(75,009,364)	(100,611,452)
Acquisition of property, plant and equipment	(1,083,989)	(5,103,688)
Movements in term deposits	74,000,000	(93,000,000)
<b>Net cash from investing activities</b>	<b>(2,093,353)</b>	<b>(7,928,525)</b>
<b>Cash flows from financing activities</b>		
Payments to Trustpower consumers (including grants)	(55,162,279)	(42,183,879)
Repayments of consumer loans	168,000	-
Other cash items	5,910	-
<b>Net cash from financing activities</b>	<b>(54,988,369)</b>	<b>(42,183,879)</b>
<b>Net (decrease)/increase</b>	<b>(4,678,815)</b>	<b>\$4,672,911</b>
<b>Opening cash and cash equivalents</b>	<b>6,855,406</b>	<b>2,182,495</b>
<b>Closing cash and cash equivalents</b>	<b>2,176,591</b>	<b>6,855,406</b>
Made up of:		
Bank balances	2,176,591	6,855,406
<b>Total cash and cash equivalents</b>	<b>2,176,591</b>	<b>6,855,406</b>



Mark Arundel - Trustee  
16 June 2020



Bill Holland - Trustee  
16 June 2020

These statements are to be read in conjunction with the Notes to the financial statements.



# NOTES

to the consolidated  
financial statements

## 1 Reporting Entity

These are the Summarised Financial Statements for the TECT Group comprising Tauranga Energy Consumer Trust (TECT), TECT Charitable Trust, TECT Holdings Limited and TECT Property Limited. The Tauranga Energy Consumer Trust was established under a Trust Deed on 21 December 1993 as a consequence of the Tauranga Electric Power Board's Establishment Plan. TECT is a Consumer Trust, the income and capital of which are to be used to provide benefits to Consumers who are Trustpower customers in the area defined in the Trust Deed (being the area supplied by the Tauranga Electric Power Board as at 21 December 1993 subsequently amended to include the Tauranga district area previously supplied by Tauranga Electricity Limited). The Tauranga Energy Consumer Trust is not a Charitable Trust and accordingly may not continue for more than 80 years. On the winding up of the Trust, all surplus assets shall be paid, applied or appropriated to or for the benefit of the Consumers. At 31 March 2020 TECT Group held 83,878,838 shares in Trustpower, representing 26.8% in the capital of the company. These shares are held by TECT Holdings Ltd, a 100% wholly owned subsidiary company.

## 2 Basis of Preparation

The summary financial statements are prepared in accordance with FRS 43 Summary Financial Statements. The full financial statements have been prepared in accordance with New Zealand Generally Accepted Accounting Practice (NZ GAAP), as applicable for profit-oriented entities. The Trust has made an explicit and unreserved statement of compliance with New Zealand Equivalents to International Financial Reporting Standards Reduced Disclosure Regime (IFRS RDR) in its full financial statements. This summary is extracted from the full financial statements authorised for issue by the Trustees on 16 June 2020, for which an unmodified audit opinion has been given. This summary has also been examined by Crowe New Zealand Audit Partnership and a copy of their summary unmodified audit opinion is included in this report. The summary financial statements are presented in New Zealand dollars and rounded to the nearest dollar. The summary financial statements cannot be expected to provide as complete an understanding as provided by the full financial statements of the Trust. You can obtain a copy of the

full financial statements free of charge from the TECT office at The Kollektive, 145 Seventeenth Avenue, Tauranga, 3112 or the Trust's website, [www.tect.org.nz](http://www.tect.org.nz).

## 3 Taxation

The tax benefit of \$1,845,167 (2019 - \$2,267,626) relates to the tax effect of the current year tax losses and excess imputation credits not recognised.

## 4 Trustpower Limited Investment

TECT Group has the majority of its funds invested in Trustpower. The share price in Trustpower is subject to significant fluctuations. In the two months immediately following balance date the Trustpower price varied between a low of \$6.00 and a high of \$7.30 compared to a market price of \$6.40 at balance date.

## 5 Commitments and Contingencies

The TECT Group had the following commitments at the end of the financial year:

	2020	2019
LGT - Crown Capital Opportunities	6,889,980	-
Waterman Fund 4	4,875,000	5,385,593
Purpose Capital Impact Fund	4,750,000	-
Waterman Fund 3	1,125,500	-
Continuity Capital PE Fund No 2	750,000	1,263,625
Continuity Capital PE Fund No 4	4,125,000	-
Enterprise Angels Fund 2	30,000	50,000
Enterprise Angels Fund 3	180,000	-
Oakens Capital	900,000	1,375,000
Penicarrow Bridge Fund	275,000	600,000
WNT Ventures	97,500	155,000
	<b>\$23,997,980</b>	<b>\$4,794,125</b>

The TECT Group had no contingencies at the end of the financial year (2019: Nil).



# NOTES

to the consolidated  
financial statements

## 6 Related Party Transactions

Bill Holland, Wayne Werder and Mark Arundel are trustees of the Tauranga Tertiary Campus Charitable Trust. There were no transactions between TECT and the Tauranga Tertiary Campus Charitable Trust for the 2020 year. (2019: \$7,500,000). Trustees are required to be Consumers as defined in TECT's Trust Deed and are therefore beneficiaries of TECT and accordingly are related parties. All transactions with related parties are undertaken in the normal course of business on normal commercial terms.

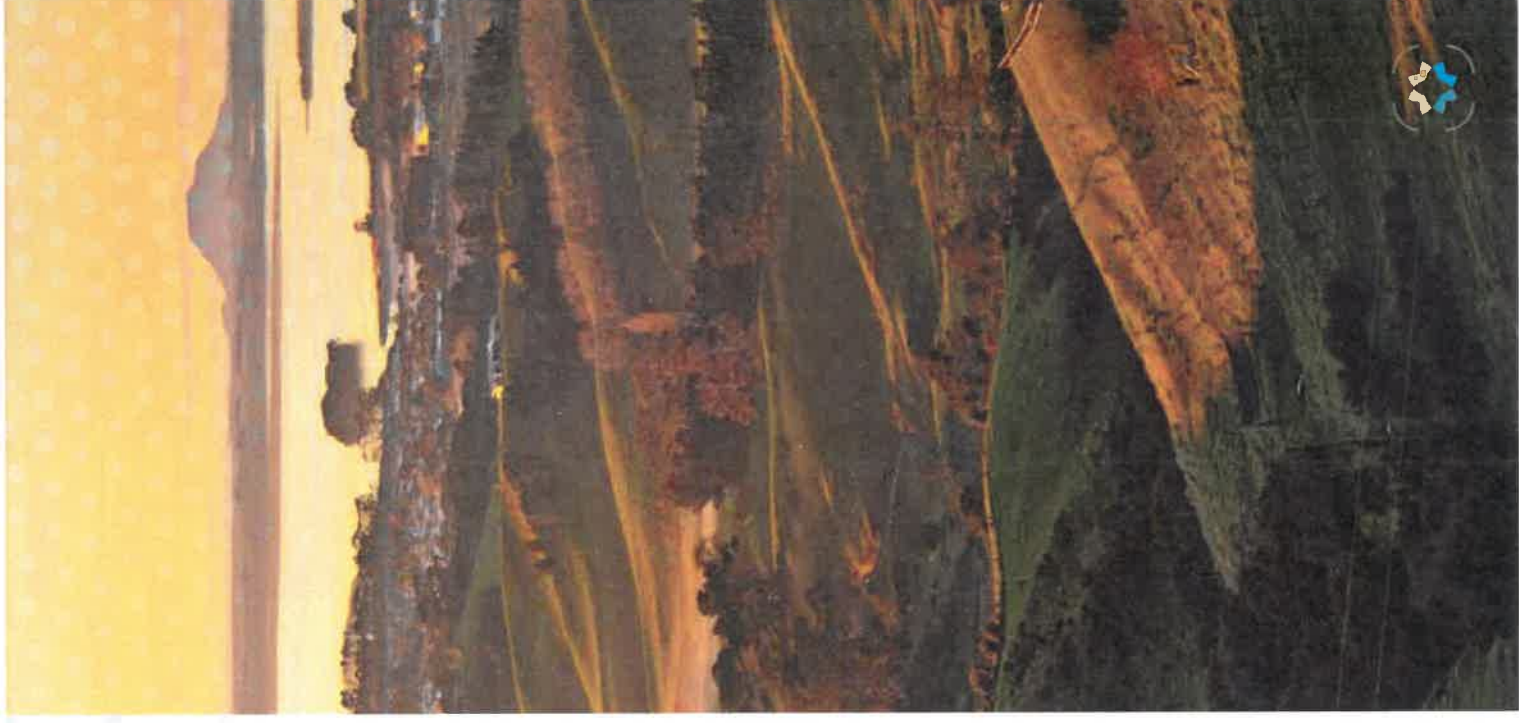
## 7 Subsequent Events

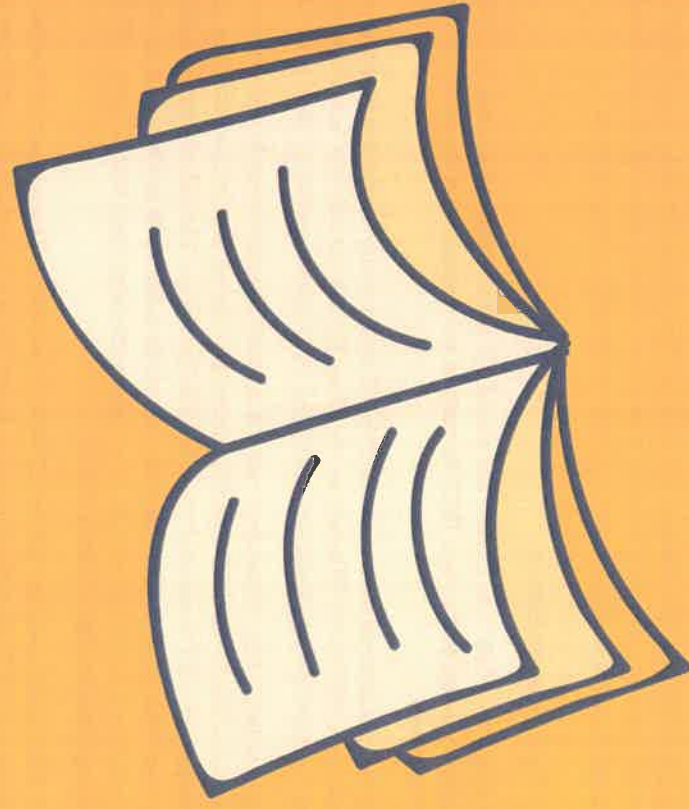
On March 25, 2020, New Zealand was placed in a nationwide lockdown due to COVID-19 and the world pandemic caused by the virus. TECT, its trustees and employees continued to operate from home work environments.

The trustees assessed the impact of COVID-19 on the group to be minimal from an operations perspective. In response to the COVID-19 lockdown, the Group has worked with Bay Trust, Acorn Foundation and Tauranga City Council to set up a Rapid Response Fund. TECT grants continue to be accepted and approved.

In light of the COVID-19 lockdown and the economic struggles many in our community are facing, the trustees made a decision to pay half of the July rebate early. The payment process date was set at 15 May 2020. A fixed amount of \$110 was paid to each eligible beneficiary. The variable amount typically paid in addition to the fixed amount will be included in the July rebate payment. To be eligible for the rebate, beneficiaries must have had an active Trustpower power account in the same name from 1 October 2019 - 31 March 2020 in the Tauranga/Western Bay of Plenty district.

The trustees acknowledge that the COVID-19 pandemic will have impact on the group's future valuation of investments. TECT's diversified investment portfolio should provide some resilience against potential negative market trends.





# AUDITOR'S REPORT



## REPORT OF THE INDEPENDENT AUDITOR ON THE SUMMARY CONSOLIDATED FINANCIAL STATEMENTS

### To the Beneficiaries of the Tauranga Energy Consumer Trust

#### Opinion

The summary consolidated financial statements, which comprise the summary consolidated statement of financial position as at 31 March 2020, the summary consolidated statement of profit or loss and other comprehensive income, summary consolidated statement of changes in equity and summary consolidated statement of cash flows for the year then ended, and related notes, are derived from the audited consolidated financial statements of Tauranga Energy Consumer Trust and its controlled entities (the Group) for the year ended 31 March 2020.

In our opinion, the accompanying summary consolidated financial statements are consistent, in all material respects, with the audited financial statements, in accordance with FRS-43: Summary Financial Statements issued by the New Zealand Accounting Standards Board.

#### Emphasis of matter – COVID-19

We draw attention to Note 7 of the financial statements, which describes the effects of the nationwide lockdown due to COVID-19 on 25 March 2020. Our opinion is not modified in respect of this matter.

### Summary Consolidated Financial Statements

The summary consolidated financial statements do not contain all the disclosures required by New Zealand equivalents to International Financial Reporting Standards (NZ IFRS). Reading the summary consolidated financial statements and the auditor's report thereon, therefore, is not a substitute for reading the audited financial statements and the auditor's report thereon. The summary consolidated financial statements and the audited financial statements do not reflect the effects of events that occurred subsequent to the date of our report on the audited financial statements.

### The Audited Financial Statements and Our Report Thereon

We expressed an unmodified audit opinion on the audited financial statements in our report dated 16 June 2020.

### Trustees' Responsibility for the Summary Consolidated Financial Statements

The trustees are responsible on behalf of the entity for the preparation of the summary consolidated financial statements in accordance with FRS-43: Summary Financial Statements.

### Auditor's Responsibility

Our responsibility is to express an opinion on whether the summary consolidated financial statements are consistent, in all material respects, with the audited financial statements based on our procedures, which were conducted in accordance with International Standard on Auditing (New Zealand) (ISA (NZ)) 810 (Revised), Engagements to Report on Summary Financial Statements.

Other than in our capacity as auditor we have no relationship with, or interests in, Tauranga Energy Consumer Trust and its controlled entities.

*Crowe*

Crowe New Zealand Audit Partnership  
CHARTERED ACCOUNTANTS

Dated at Tauranga this 16th day of June 2020





# TECT



## TECT AGM

Join us at our 2020 Annual General Meeting

Tuesday 28th July, 1pm

Club Mount Maunganui,  
45 Kawaka Street,  
Mount Maunganui

At the heart of  
our community

## TAB 8







# Performance Report

**TECT Charitable Trust**  
**For the year ended 31 March 2020**

# Contents

3	Trust Directory
4	Entity Information
5	Approval of Performance Report
6	Statement of Service Performance
7	Statement of Financial Performance
8	Statement of Financial Position
9	Statement of Cash Flows
10	Statement of Accounting Policies
12	Notes to the Performance Report
16	Audit Report

# Trust Directory

## TECT Charitable Trust For the year ended 31 March 2020

### Trustees

W Holland, Chairperson  
N Bridges, Deputy Chairperson  
M Arundel  
A Sutcliffe  
P Blackwell  
T Jennen

### General Manager

Wayne Werder

### Settlement date

27 March 2002

### Settlor

Tauranga Energy Consumer Trust

### Chartered Accountant

KPMG  
247 Cameron Road  
Tauranga

### Solicitors

Sharp Tudhope  
Tauranga

### Bankers

Westpac Bank

### Auditors

Crowe New Zealand Audit Partnership

## Entity Information

### TECT Charitable Trust For the year ended 31 March 2020

#### Legal Name of Entity

TECT Charitable Trust

#### Entity Type and Legal Basis

Charitable Trust and Registered Charity

#### Registration Number

CC26852

#### Entity's Purpose or Mission

TECT Charitable Trust was established under a Trust Deed on 27 March 2002 for Charitable Purposes for the benefit of Charitable Consumers.

#### Entity Structure

**Trust Structure:** TECT Charitable Trust is a subsidiary of the Tauranga Energy Consumer Trust and forms part of the TECT Group. The Trustees of Tauranga Energy Consumer Trust are also the Trustees of TECT Charitable Trust. Tauranga Energy Consumer Trust is governed by six trustees who are elected by the Consumers. The term of appointment is four years. The terms of appointment of Trustees are staggered so that three Trustees retire every two years. Retiring Trustees are eligible for nomination for re-election.

**Operational Structure:** Our operations are managed by a team of five paid employees, employed by Tauranga Energy Consumer Trust, and include a General Manager and staff.

#### Main Sources of Entity's Cash and Resources

TECT Charitable Trust received its main source of cash from investment portfolio income distributions and rebates.

#### Main Methods Used by Entity to Raise Funds

TECT Charitable Trust did not undertake any fundraising activities during the year.

#### Entity's Reliance on Volunteers and Donated Goods or Services

There was no reliance on volunteers or donated goods or services for TECT Charitable Trust to continue operations.

#### Physical Address

The Collective, 159 Seventeenth Ave, Tauranga, New Zealand, 3112

#### Postal Address

DX Box HP 40007, Tauranga, New Zealand, 3112

# Approval of Performance Report

## TECT Charitable Trust

For the year ended 31 March 2020

The Trustees are pleased to present the approved performance report including the historical financial statements of TECT Charitable Trust for year ended 31 March 2020.

APPROVED



Trustee

Date 16/6/2020



Trustee

Date 16/6/2020

# Statement of Service Performance

## TECT Charitable Trust For the year ended 31 March 2020

### Description of Entity's Outcomes

#### 1. Grant-making

To enable TECT Charitable Trust recipients to deliver greater benefits to TECT Consumers.

- a. Diversity - Seek to balance support between social, economic, recreational, cultural and environmental requirements.
- b. Collaboration - TECT Charitable Trust will work collaboratively with key partners to understand and support community priorities.
- c. Iconic Projects - Commit to the delivery of significant regional projects delivering inter-generational benefit and wide impact.
- d. Transparency and Efficiency - Have a clear, simple, consistent and transparent funding process that is well communicated.

#### 2. Investments

To manage our investments in a manner consistent with our Trust Deed, SIPO and values.

#### 3. Governance and Operations

To ensure effective and efficient delivery of our vision and mission in accordance with our values.

	THIS YEAR ACTUAL	THIS YEAR BUDGET	LAST YEAR ACTUAL
<b>Description and Quantification of the Entity's Outputs</b>			
Total value of grants approved	3,167,722	4,000,000	4,803,065
Total distributions made (\$)	3,707,780	3,000,000	3,578,388
Number of community groups that receive funding	139	90	103
Value of funds invested (\$)	180,135,149	170,000,000	216,731,705

# Statement of Financial Performance

## TECT Charitable Trust For the year ended 31 March 2020

	NOTES	2020	2019
<b>Revenue</b>			
Donations, fundraising and other similar revenue	1	969,465	666,492
Revenue from providing goods or services	1	142,797	12,000
Interest, dividends and other investment revenue	1	(15,770,200)	16,574,872
<b>Total Revenue</b>		<b>(14,657,937)</b>	<b>17,253,364</b>
<b>Expenses</b>			
Costs related to providing goods or service	2	308,289	218,628
<b>Total Expenses</b>		<b>308,289</b>	<b>218,628</b>
<b>Surplus/(Deficit) for the Year</b>		<b>(14,966,226)</b>	<b>17,034,736</b>

This statement should be read in conjunction with the attached Compilation Report.



# Statement of Financial Position

## TECT Charitable Trust

As at 31 March 2020

	NOTES	31 MAR 2020	31 MAR 2019
<b>Assets</b>			
<b>Current Assets</b>			
Bank accounts and cash		1,663,618	178,917
Debtors and prepayments		17,295	17,978
Goods and services tax		11,117	32,730
<b>Total Current Assets</b>		<b>1,692,030</b>	<b>229,625</b>
<b>Non-Current Assets</b>			
Advance - Social Sector Innovation Trust Loan		88,944	170,136
Property, Plant and Equipment		214,255	9,928,090
Investments	3	180,135,149	216,546,729
Investment property		10,656,502	-
<b>Total Non-Current Assets</b>		<b>191,094,851</b>	<b>226,645,755</b>
<b>Total Assets</b>		<b>192,786,881</b>	<b>226,875,380</b>
<b>Liabilities</b>			
<b>Current Liabilities</b>			
Creditors and accrued expenses	5	44,549	86,732
Other current liabilities	5	2,664,273	3,523,656
Advances	5	131,901,079	147,274,429
<b>Total Current Liabilities</b>		<b>134,609,901</b>	<b>150,884,817</b>
<b>Total Liabilities</b>		<b>134,609,901</b>	<b>150,884,817</b>
<b>Total Assets less Total Liabilities (Net Assets)</b>		<b>58,176,979</b>	<b>75,990,562</b>
<b>Accumulated Funds</b>			
Capital contributed by owners or members		100	100
Accumulated surpluses or (deficits)	6	22,152,039	24,041,930
Capital Maintenance (Inflation) Reserve	7	11,860,002	8,009,352
Grants Maintenance Reserve	7	24,164,838	43,939,180
<b>Total Accumulated Funds</b>		<b>58,176,979</b>	<b>75,990,562</b>

This statement should be read in conjunction with the attached Compilation Report.

# Statement of Cash Flows

## TECT Charitable Trust

For the year ended 31 March 2020

	2020	2019
<b>Cash Flows from Operating Activities</b>		
Donations, fundraising and other similar receipts	34,578	1
Interest, dividends and other investment receipts	10,163,570	3,213,944
Donations or grants paid	(3,706,738)	(3,578,399)
Cash receipts from other operating activities	133,122	-
GST	10,049	7,974
Payments to suppliers and employees	(147,804)	21,247
<b>Total Cash Flows from Operating Activities</b>	<b>6,486,778</b>	<b>(335,193)</b>
<b>Cash Flows from Investing and Financing Activities</b>		
Proceeds from loans borrowed from other parties	39,713,998	146,661,595
Payments to acquire property, plant and equipment	(461,797)	-
Receipts from sale of investments	83,976,974	82,838,699
Payments to purchase investments	(73,738,706)	(122,747,522)
Repayments of loans borrowed from other parties	(54,642,345)	(106,773,237)
Repayment received on loans made to other parties	150,000	(200,000)
<b>Total Cash Flows from Investing and Financing Activities</b>	<b>(5,002,076)</b>	<b>(220,465)</b>
<b>Net Increase/(Decrease) in Cash</b>	<b>1,484,702</b>	<b>(555,658)</b>
<b>Bank Accounts and Cash</b>		
Opening cash	178,917	734,575
Closing cash	1,663,618	178,917
<b>Net change in cash for period</b>	<b>1,484,702</b>	<b>(555,658)</b>

This statement should be read in conjunction with the attached Compilation Report.

# Statement of Accounting Policies

## TECT Charitable Trust

For the year ended 31 March 2020

### Basis of Preparation

The entity has elected to apply PBE SFR-A (NFP) Public Benefit Entity Simple Format Reporting – Accrual (Not-For-Profit) on the basis that it does not have public accountability and has total annual expenses equal to or less than \$2,000,000. All transactions in the Performance Report are reported using the accrual basis of accounting. The Performance Report is prepared under the assumption that the entity will continue to operate in the foreseeable future.

### Interest, Dividends and Other Investment Revenue

Interest income is recognised as it accrues in surplus or deficit, using the effective interest method. Dividend and distribution income is recognised in surplus or deficit on the date that the Trust's right to receive payment is established.

### Non-Exchange Revenue

Non-exchange transactions are those where the Entity receives value from another entity (e.g. cash or other assets) without giving approximately equal value in exchange.

Inflows of resources from non-exchange transactions, other than services in-kind, that meet the definition of an asset are recognised as an asset only when:

- It is probable that the Entity will receive an inflow of economic benefits or service potential; and
- The fair value can be measured reliably.

Inflows of resources from non-exchange transactions that are recognised as assets are recognised as non-exchange revenue, to the extent that a liability is not recognised in respect to the same inflow.

The following are the specific recognition criteria in relation to the Entity's non-exchange transactions.

#### (i) Donations

Donations are recognised as revenue when it is probable that the future economic benefits or service potential will flow to the entity, and the fair value of the assets can be measured reliably. For donations this is usually upon receipt of the donation. Donations are recognised as revenue at their fair value at the date of recognition.

### Income Tax

TECT Charitable Trust is wholly exempt from New Zealand income tax having fully complied with all statutory conditions for these exemptions, under section CW 52 of the Income Tax Act 2007.

### Bank Accounts and Cash

Bank accounts and cash in the Statement of Cash Flows comprise cash balances and bank balances (including short term deposits) with original maturities of 90 days or less.

### Investments

TECT Charitable Trust has purchased investments as detailed in Note 3. TECT Charitable Trust has classified these investments as financial assets according to PBE IPSAS 29. These investments are recognised at fair value on the Statement of Financial Position with movements being recognised in profit or loss. Trustees have determined that the most appropriate measurement base of fair value is based on the closing unit price of the respective funds.

### Goods and Services Tax (GST)

The entity registered for GST in November 2017.

## Provisions

A provision is recognised if, as a result of a past event the Trust has a present legal or constructive obligation that can be estimated reliably, and it is probable that an outflow of economic benefits will be required to settle the obligation. Provisions represent expected future cash flows at the pre-tax rate that reflects current market assessments of the time value of money and risks specific to the liability.

Grants and distributions still to be paid are considered to be provisions as the amounts can be estimated reliably and past practice indicates substantially all of the communicated commitments are subsequently paid. Grant provisions are not discounted as the date of cash outflow cannot be estimated reliably and in any event the effect of discounting is not considered to be material.

Grants and distributions are recorded through accumulated funds, rather than through the statement of financial performance as they are for the beneficiaries of the Trust.

## Property, Plant & Equipment

All property, plant and equipment are stated at cost less depreciation. Trustees consider that these rates give a reasonable approximation of the estimated usable lives of these assets.

Principal depreciation rates are:

Motor Vehicles - 30%

Furniture & Fittings - 10-16%

Computers & Software - 50%

Plant & Equipment - 25%

Depreciation methods, useful lives and residual values are reassessed at each reporting date.

## Investment Property

Investment property comprises land and buildings that are leased to third parties under operating leases. The Collective property at 17th Avenue, Tauranga has been re-classified as an investment property at year end 31 March 2020 to more accurately reflect the investment nature of the property. The property is accounted for using the cost basis.

TECT Charitable Trust (TCT), the owner of The Collective, has entered into an agreement with Social Sector Innovation WBOP Charitable Trust (SocialLink) to manage the property. SocialLink lease spaces to various community organisations. TECT receives lease payments, being the surplus from SocialLink, after various costs. TCT also pays SocialLink a management fee of \$10,000 per annum.

## Advances

Advances payable by the trust are initially recorded at fair value net of transaction costs and subsequently measured at amortised cost.

## Changes in Accounting Policies

The Collective property was re-classified to investment property during the 2020 year. See Investment Property policy for more details.

There have been no changes in accounting policies. Policies have been applied on a consistent basis with those of the previous reporting period.

# Notes to the Performance Report

## TECT Charitable Trust

For the year ended 31 March 2020

	2020	2019
<b>1. Analysis of Revenue</b>		
<b>Donations, fundraising and other similar revenue</b>		
Donations Received	12,000	-
Distributions Received - Tauranga Energy Consumer Trust	199,019	11,078
Capital Distribution Received - Tauranga Energy Consumer Trust	758,447	655,414
<b>Total Donations, fundraising and other similar revenue</b>	<b>969,466</b>	<b>666,492</b>
<b>Revenue from providing goods or services</b>		
Net Rental Income	130,797	-
Services Charged	12,000	12,000
<b>Total Revenue from providing goods or services</b>	<b>142,797</b>	<b>12,000</b>
<b>Interest, dividends and other investment revenue</b>		
Interest Rate Adjustment Fair Value	68,809	(29,864)
Interest Received - IRD	-	1
Investment Portfolio Income Distribution Received	11,218,635	5,385,593
Interest Received - Westpac	6,910	1,024
Fair value gain/(loss) on investments	(26,210,825)	11,218,119
Unrealised FX gain/losses on investments	(853,729)	-
<b>Total Interest, dividends and other investment revenue</b>	<b>(15,770,200)</b>	<b>16,574,872</b>
	2020	2019

## 2. Analysis of Expenses

<b>Costs related to providing goods or services</b>		
Accountancy Fees	984	-
Audit Fees	-	8,400
Bank Charges	(2)	1
Charities Annual Return Fee	44	51
Depreciation Expense	40,484	320
Insurance	-	1,540
Investment Expenses	87,681	-
Legal & Advisory Expenses	6,862	-
Management fees	12,000	12,000
Motor Vehicle Expenses	42	-
Portfolio Management Fees	149,721	234,416
Power	-	2,795
Printing, Stamps & Stationery	902	-
Rebates	(18,995)	(74,304)
Rent	25,000	28,000
Telephone, Tolls & Internet	2,183	3,812
TK Sundry Expenses	1,783	1,597
<b>Total Costs related to providing goods or services</b>	<b>303,289</b>	<b>218,628</b>

	2020	2019
<b>3. Investments</b>		
<b>Investments in funds</b>		
<b>Cash investments</b>		
Nikko Asset Management	24,914,642	31,598,587
<b>Total Cash investments</b>	<b>24,914,642</b>	<b>31,598,587</b>
<b>Australian equities</b>		
Devon Trans Tasman Fund	20,952,446	23,030,620
Nikko AM Wholesale Core Equity Fund	17,954,865	9,288,509
<b>Total Australian equities</b>	<b>38,907,312</b>	<b>32,319,130</b>
<b>International equities</b>		
Mercer Hedged Overseas Shares	39,020,628	-
Mercer Overseas Shares Index Portfolio	15,759,963	-
Vanguard International	-	113,140,410
Vanguard International Small Companies Index Fund	19,675,105	-
<b>Total International equities</b>	<b>74,455,696</b>	<b>113,140,410</b>
<b>Private equity</b>		
Continuity Capital Partners Fund	3,363,665	2,877,331
Continuity Capital Partners Fund - Time Value of Money	-	51,424
Enterprise Angels - EA Fund 2	174,760	154,760
Enterprise Angels - EA Fund 3	20,000	-
LGT - Crown Capital Opportunities VII SCS	1,220,536	-
Orlens Capital	1,776,000	1,151,880
Pencarrow Bridge Fund	2,367,400	2,023,500
Purpose Capital Impact Fund (PCIF)	250,000	-
Waterman Fund 3	4,243,000	4,018,000
Waterman Fund 4	125,000	-
WNT Ventures Investment	100,450	23,810
<b>Total Private equity</b>	<b>13,660,811</b>	<b>10,300,704</b>
<b>Real assets</b>		
Mercer Portfolio	28,196,690	29,187,899
<b>Total Real assets</b>	<b>28,196,690</b>	<b>29,187,899</b>
<b>Total Investments in funds</b>	<b>180,135,149</b>	<b>216,546,729</b>

#### 4. Commitments

TECT Charitable Trust had the following commitments as at 31 March 2020: (2019 - \$4,794,125).

##### Uncalled Capital on Private Equity Investments

Continuity Capital PE Fund 2	\$750,000
Purpose Capital Impact Fund	\$4,750,000
Waterman Fund 4	\$1,125,500

Waterman Fund 4	\$4,875,000
Enterprise Angels EA Fund 2	\$30,000
Enterprise Angels EA Fund 3	\$180,000
Oriens Capital	\$900,000
Pencarrow Bridge Fund	\$275,000
WNT Ventures Investments	\$97,500
LGT - Crown Capital Opportunities VII SCS	\$6,889,980
<b>Total</b>	<b>\$19,872,980</b>

	2020	2019
<b>5. Analysis of Liabilities</b>		
<b>Creditors and accrued expenses</b>		
Accounts payable	44,549	86,732
<b>Total Creditors and accrued expenses</b>	<b>44,549</b>	<b>86,732</b>
<b>Other current liabilities</b>		
Provision for distributions	2,664,273	3,523,656
<b>Total Other current liabilities</b>	<b>2,664,273</b>	<b>3,523,656</b>
<b>Advances</b>		
Advance - TECT Holdings Limited	79,449,833	120,776,864
Advance - Tauranga Energy Consumer Trust	52,451,246	26,497,545
<b>Total Advances</b>	<b>131,901,079</b>	<b>147,274,429</b>
	2020	2019

	2020	2019
<b>6. Accumulated Surpluses</b>		
Trust equity brought forward	24,041,930	27,585,162
Current year earnings	(14,966,226)	17,034,736
Distributions approved	(3,167,722)	(5,213,065)
Distributions written back	320,365	194,389
Reserve transfers	15,823,692	(15,559,292)
<b>Total Accumulated Surpluses</b>	<b>22,152,039</b>	<b>24,041,930</b>

## 7. Description of Reserves

### Capital Maintenance (Inflation) Reserve

Represents the additional amount necessary to preserve the real value of the trust capital allowing for inflation as measured by the Consumers Price Index (all groups) and payments of grants out of capital.

### Grants Maintenance Reserve

While the Trustees have adopted a long-term investment strategy, they accept that annual returns from investments are likely to fluctuate from year to year. In recognition of this, a grants maintenance reserve is maintained. In years when net income from investments is higher than the grant levels, surplus income will be transferred to this reserve. In years when there is insufficient income to sustain the level of grants, an appropriate amount will be transferred from the grants maintenance reserve to income.

	2020	2019
<b>Capital Maintenance Reserve</b>		
Opening balance	8,009,352	5,698,962
Movement for the year	3,850,650	2,310,290
<b>Total Capital Maintenance Reserve</b>	<b>11,860,002</b>	<b>8,009,352</b>
	2020	2019
<b>Grants Maintenance Reserve</b>		
Opening balance	43,939,180	30,690,278
Movement for the year	(19,774,342)	13,248,902
<b>Total Grants Maintenance Reserve</b>	<b>24,164,838</b>	<b>43,939,180</b>

## 8. Contingent Liabilities & Guarantees

There are no contingent liabilities or guarantees as at 31 March 2020 (2019 - nil)

## 9. Related Parties

The parent entity, TECT, distributes funds to TCT Charitable Trust (note 1). The Trustees adhere to the guidance in TECT's Code of Practice and remove themselves from the decision making process to ensure no conflicts of interest occur.

The parent TECT has agreed to provide funds by way of a loan advance of up to \$154m to TECT Charitable Trust for the purpose of enabling the Trust to carry out its charitable activities. At 31 March 2020 the advance balance was \$52,342,268 (2019 - \$26,388,567). In addition the trust owed at 31 March 2020 \$108,978 (2019 - \$108,978) to the parent TECT together with \$79,449,833 (2019 - \$120,776,884) to TECT Holdings Limited, an entity controlled by the parent TECT.

Management Fees of \$12,000 have been charged by the parent TECT (2019 - \$12,000).

TECT Charitable Trust charged management fees of \$12,000 back to the parent company TECT (2019 - \$12,000).

The parent TECT distributed revenue to the trust in the 2020 year of \$957,466 (2019 - \$666,492).

## 10. Events After the Balance Date

On March 25, 2020, New Zealand was placed in a nationwide lockdown due to COVID-19 and the world pandemic caused by the virus. TECT, its Trustees and employees continued to operate from home work environments.

The Trustees assess the impact of COVID-19 on the group to be minimal from an operations perspective. In response to the COVID-19 lock down, the Trust has worked with Bay Trust, Acorn Foundation and Tauranga City Council to set up a Rapid Response Fund. TECT grants continue to be accepted and approved.

The Trustees acknowledge that the COVID-19 pandemic will have impact on the Trust's future valuation of investments. TECT's diversified investment portfolio should provide some resilience against potential negative market trends.



## INDEPENDENT AUDITOR'S REPORT

### To the Beneficiaries of TECT Charitable Trust

#### Opinion

We have audited the performance report of TECT Charitable Trust (the Trust) on pages 4 to 15, which comprises the entity information, the statement of service performance, the statement of financial performance and statement of cash flows for the year ended 31 March 2020, the statement of financial position as at 31 March 2020, and the statement of accounting policies and other explanatory information.

#### In our opinion:

- a) the reported outcomes and outputs, and quantification of the outputs to the extent practicable, in the statement of service performance are suitable; and
- b) the performance report on pages 4 to 15 presents fairly, in all material respects:
  - the entity information for the year ended 31 March 2020;
  - the service performance for the year ended 31 March 2020; and
  - the financial position of the Trust as at 31 March 2020, its financial performance and cash flows for the year then ended

In accordance with Public Benefit Entity Simple Format Reporting – Accrual (Not-For-Profit).

#### Basis for Opinion

We conducted our audit of the statement of financial performance, statement of financial position, statement of cash flows, statement of accounting policies and notes to the performance report in accordance with International Standards on Auditing (New Zealand) (ISAs (NZ)), and of the entity information and statement of service performance in accordance with the International Standard on Assurance Engagements (New Zealand) ISAE (NZ) 3000. Our responsibilities under these standards are further described in the *Auditor's Responsibilities for the Audit of the Performance Report* section of our report.

We are independent of the Trust in accordance with Professional and Ethical Standard 1 (Revised) *Code of Ethics for Assurance Practitioners* Issued by the New Zealand Auditing and Assurance Standards Board, and we have fulfilled our other ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Other than in our capacity as auditor we have no relationship with, or interests in, the Trust.

#### Emphasis of matter – COVID-19

We draw attention to Note 10 of the financial statements, which describes the effects of the nationwide lockdown due to COVID-19 on 25 March 2020. Our opinion is not modified in respect of this matter.

#### Responsibilities of the Trustees for the Performance Report

The Trustees are responsible on behalf of the Trust for:

- (a) Identifying outcomes and outputs, and quantifying the outputs to the extent practicable, that are relevant, reliable, comparable and understandable, to report in the statement of service performance;
- (b) The preparation and fair presentation of the performance report, which comprises:
  - the entity information;
  - the statement of service performance; and
  - the statement of financial performance, statement of financial position, statement of cash flows, statement of accounting policies and notes to the performance report



in accordance with Public Benefit Entity Simple Format Reporting – Accrual (Not-For-Profit) issued in New Zealand by the New Zealand Accounting Standards Board; and

- (c) For such internal control as the Trustees determine is necessary to enable the preparation of the performance report that is free from material misstatement, whether due to fraud or error.

In preparing the performance report, the Trustees are responsible for assessing the Trust's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the Trustees either intend to liquidate the Trust or to cease operations, or have no realistic alternative but to do so.

#### **Auditor's Responsibilities for the Audit of the Performance Report**

Our objectives are to obtain reasonable assurance about whether the performance report as a whole is free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISAs (NZ) and ISAE (NZ) 3000 will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the decisions of users taken on the basis of this performance report.

As part of an audit in accordance with ISAs (NZ) and ISAE (NZ) 3000, we exercise professional judgement and maintain professional scepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the performance report, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Trust's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of the use of the going concern basis of accounting by the Trustees and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Trust's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the performance report or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Trust to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the performance report, including the disclosures, and whether the performance report represent the underlying transactions and events in a manner that achieves fair presentation.

We communicate with the Trustees regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

A handwritten signature in blue ink that reads "Crowe".

**Crowe New Zealand Audit Partnership**  
CHARTERED ACCOUNTANTS  
Dated at Tauranga this 16th day of June 2020



## TAB 9





# TECT

## Distribution Plan 2020/21

### The Confirmed Plan

For the year ending 31 March 2021 is:

<b>Rebate Distribution</b> (previous year \$30,000,000)	<b>\$31,000,000</b>
<b>Community Development</b> (previous year \$3,750,000)	<b>\$4,000,000</b>
<b>Community Amenities</b> (previous year \$2,100,000)	<b>\$2,600,000</b>
<b>Community Events</b> (previous year \$800,000)	<b>\$1,000,000</b>
<b>Iconic Projects</b> (previous year \$1,000,000)	<b>\$1,000,000</b>
<b>Catalyst for Change</b> (previous year \$770,000)	<b>\$400,000</b>
<b>TOTAL ALLOCATIONS</b> (previous year \$38,420,000)	<b>\$40,000,000</b>

### Rebates

Each year TECT distributes the majority of its funds direct to beneficiaries\*. The calculation sees eligible beneficiaries receiving a fixed amount, plus a variable amount based on their total spend over the qualifying periods\*\*. TECT will distribute \$31 million directly to beneficiaries this year with a fixed (minimum) amount of \$220 in July and \$220 in early December – a total of \$440 (2019 was \$440).

#### Change to Two Rebate Payments

As per last year's decision, the rebate will be paid out in two instalments this year. In turn, there will be two eligibility periods:

- July 2020 eligibility period:  
1 October 2019 - 31 March 2020
- December 2020 eligibility period:  
1 April 2020 - 30 September 2020

#### Rebate Payment Options

Eligible beneficiaries can choose to have their rebate paid either direct into their bank account, credited to their power account or gifted to the Acorn Foundation Vital Impact Fund.

To make or change your payment preference, visit [www.trustpower.co.nz/tect](http://www.trustpower.co.nz/tect) or call them on 0800 87 87 87.

### Grants Programme

Each year the TECT grants programme makes funding available to community organisations and initiatives. The funds for 2020/21 are as follows:

#### Community Development Fund

Unused funds from last year: \$32,463  
Proposed funds for this year: \$4,000,000  
**Total funds available: \$4,032,463**

To support community organisations and projects that have a positive impact on the community.

#### Community Amenities Fund

Unused funds from last year: \$157,849  
Proposed funds for this year: \$2,600,000  
**Total funds available: \$2,757,849**

To support community amenities that provide significant benefit to the community.

#### Community Events Fund

Unused funds from last year: \$1,793  
Proposed funds for this year: \$1,000,000  
**Total funds available: \$1,001,793**

To assist the delivery of community events which will deliver social and economic benefits to the community.

#### Iconic Projects Fund

Unused funds from last year: \$4,600,000  
Proposed funds for this year: \$1,000,000  
**Total funds available: \$5,600,000**

This fund targets significant regional projects that will deliver inter-generational benefit and have a wide impact.

#### Catalyst For Change Fund

Unused funds from last year: \$2,197,736  
Proposed funds for this year: \$400,000  
**Total funds available: \$2,597,736**

A proactive funding approach where priorities are identified through research and consultation.

\* A TECT beneficiary is a Trustpower power account holder situated essentially in the Tauranga City or Western Bay of Plenty district.

\*\* To qualify for the July 2020 rebate you must have a Trustpower power account in the same name on 1 October 2019 and continuously through until 31 March 2020. To qualify for the December 2020 rebate you must have a Trustpower power account in the same name on 1 April 2020 and continuously through until 30 September 2020.



# TAB 10







## **MEDIA RELEASE**

*For immediate release*

Thursday 28<sup>th</sup> January 2021

---

# **Trustpower strategic review of retail business**

**TPW:** Trustpower today announces a review of its retail business.

The review will test market interest in its retail business, while also exploring the merits and business case to establish a standalone generation business.

Significant current and forecast changes in the energy and utility retailing markets are the primary driver of its review.

“Electrification and decarbonisation, decentralised energy, digital trends in service provision and utilities convergence are all shaking up traditional operating models,” Chairman, Paul Ridley-Smith said. “The Board intends to examine the options available for our market position, given these changes and opportunities.”

Trustpower has built a successful bundled retail business delivering electricity, gas, broadband and wireless connection services to 231,000 customers nationwide.

The strategic review is expected to take a number of months and no decision will be made to sell or retain the retail business until the completion of that process.

The announcement of the strategic review will also have fundamental implications for one of Trustpower’s major shareholders, the Tauranga Energy Consumer Trust (TECT), and the existing rebate scheme, the TECT distribution, Mr Ridley-Smith says.

“As a major shareholder, we have briefed TECT on the strategic review. Both Trustpower and TECT share a common goal of seeking the best possible outcome for the Trust beneficiaries, who are our customers,” he says. “TECT has advised they will be addressing potential impacts on the Trust and the rebate distribution and will communicate with Trust beneficiaries.”

Trustpower has retained Forsyth Barr as a Financial Advisor to the company in respect of the strategic review.

**ENDS**

**11.30am Conference Call:** Analysts and media are invited to a TPW conference call presentation via Zoom Webinar at 11.30am today (Thursday, 28 January). Please access the meeting via this link: [https://trustpower.zoom.us/webinar/register/WN\\_08iM8\\_MYTxv1d3YSC6Td9w](https://trustpower.zoom.us/webinar/register/WN_08iM8_MYTxv1d3YSC6Td9w)

**Images:** Hi-res images for publication are available [here](#).

**Media Enquiries:** Please direct enquiries to [nick.smith@sweeneyvesty.com](mailto:nick.smith@sweeneyvesty.com), or on 021-055 364

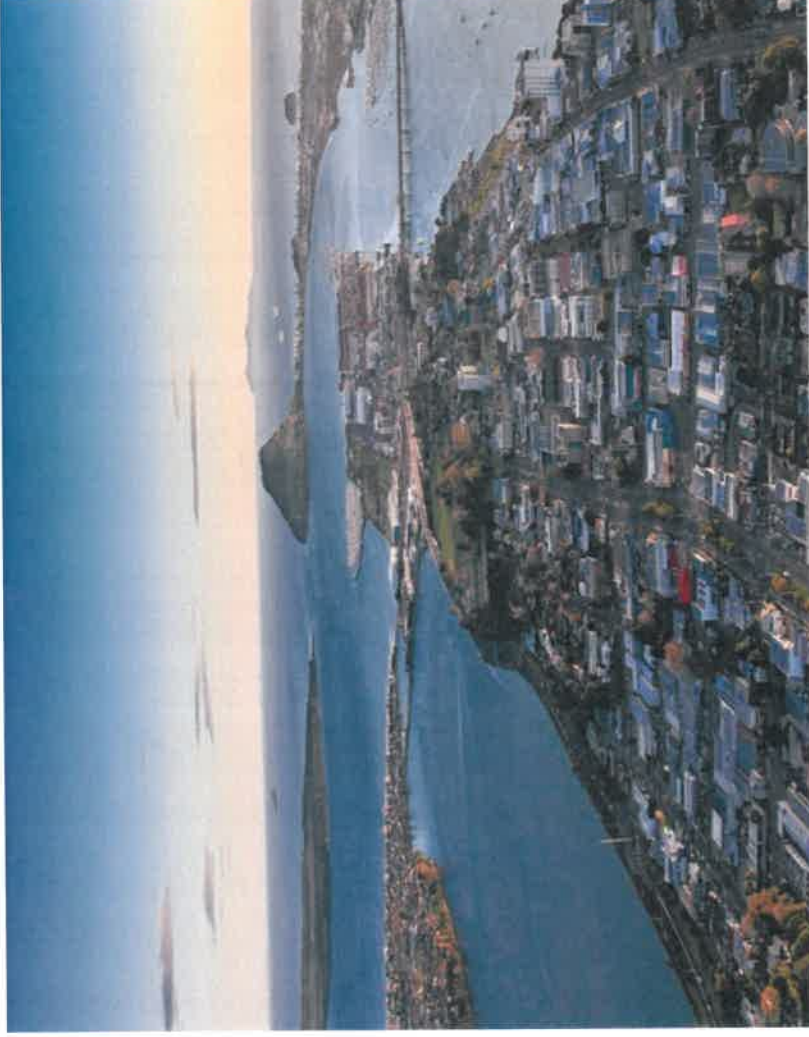
### About Trustpower

Trustpower is New Zealand's fifth largest electricity generator and fourth largest energy retailer by market share, with approximately 12% electricity retail market share. It owns 25 hydro power schemes throughout New Zealand with a total installed capacity of 495MW. It operates a multi-product retail business, including electricity, gas and telecommunications products with approximately 263,000 electricity connections, 42,000 gas connections and 106,500 telecommunications customers. For further information see [trustpower.co.nz](http://trustpower.co.nz)"

## TAB 11



# TECT assessing impact of Trustpower strategic review



Trustpower has confirmed it has initiated a strategic review and potential sale of its retail electricity, gas and telecommunications businesses. <https://www.nzx.com/announceme...>

As a 26.8% shareholder of Trustpower, and because a sale of Trustpower's retail business would require changes to the structure of TECT, TECT's Trustees were briefed by Trustpower on the review in advance of it being publicly announced.

Trustees are well advanced in developing a proposal that outlines the changes to TECT's structure needed to meet the purpose of the Trust Deed, and to ensure that the best interests of the Trust and its beneficiaries are protected.

In particular, Trustees are focused on protecting the TECT rebate for existing beneficiaries.

TECT expects to shortly provide a full update to beneficiaries on the proposed changes and undertake a consultation process.

TECT will not be making any further media comment until the full update.

News

Tweet

Like 0

Share

Save

Share

### Write to us

The Kollektive  
DX Box HP40007  
Tauranga 3112

### Visit us

The Kollektive,  
145 17th Avenue,  
Tauranga, New Zealand

### Phone us

07 578 5094

### Email us

info@tect.org.nz



TECT



TECT Proposal 2021 [About Us](#) [Funding](#) [Stories](#) [Rebates](#) [Contact](#)

[f](#) [@](#) [in](#)

Copyright © 2021 [desktopboard](#)





## TAB 12



[INSERT LOGO]

# TECT Community Trust

*Draft for consultation*

## CONTENTS

<b>1</b>	<b>DEFINITIONS AND CONSTRUCTION</b>	<b>1</b>
1.1	Defined terms	1
1.2	Construction	4
<b>2</b>	<b>CREATION OF THE TRUST</b>	<b>4</b>
2.1	Declaration of trust	4
2.2	Name of trusts	4
2.3	Incorporation under the Charitable Trusts Act 1957	4
2.4	Registration under the Charities Act 2005	4
<b>3</b>	<b>CHARITABLE PURPOSES</b>	<b>5</b>
3.1	Purposes	5
<b>4</b>	<b>POWERS TO MAKE DISTRIBUTIONS</b>	<b>5</b>
4.1	Discretionary power to pay, apply or appropriate income	5
4.2	Discretionary power to pay, apply or appropriate capital	5
4.3	Provisions relating to payments, applications and appropriations of income and capital	5
4.4	Accumulation of Surplus Income	6
<b>5</b>	<b>APPOINTMENT, RETIREMENT AND PROCEEDINGS OF TRUSTEES</b>	<b>6</b>
<b>6</b>	<b>TRUSTEES' DUTIES</b>	<b>6</b>
6.1	General duties	6
6.2	Financial Statements	6
6.3	Annual Plan and significant projects	7
6.4	Appointment of auditor	7
6.5	Appointment of Independent Returning Officer	7
6.6	Confidential Information	7
6.7	Restrictions on private pecuniary profit	8
6.8	Prohibition of benefit or advantage in business activity	8
<b>7</b>	<b>TRUSTEES' POWERS</b>	<b>9</b>
7.1	Trustees' general powers	9
7.2	Trustees' specific powers	9
7.3	Exercise of powers	9
<b>8</b>	<b>TRUSTEES' LIABILITY AND INDEMNITY</b>	<b>9</b>
8.1	Limitation of liability of Trustees	9
8.2	Trustees' Indemnity and reimbursement	10
8.3	Gross negligence	10
8.4	Trustees' liability insurance	10
<b>9</b>	<b>INFORMATION</b>	<b>11</b>
<b>10</b>	<b>REMUNERATION AND EXPENSES OF TRUSTEES</b>	<b>11</b>
10.1	Remuneration for services	11
10.2	Procedure for authorisation	11

<b>11</b>	<b>INDEPENDENT RETURNING OFFICER</b>	<b>12</b>
11.1	Role of Independent Returning Officer	12
11.2	Powers of Independent Returning Officer	12
11.3	Indemnification of Independent Returning Officer	12
<b>12</b>	<b>VARIATIONS</b>	<b>12</b>
12.1	General power of variation	12
12.2	Restrictions	13
<b>13</b>	<b>WINDING UP</b>	<b>13</b>
13.1	Power to wind up Trust	13
13.2	Distribution upon winding up	13
<b>SCHEDULE 1: TRUSTEES' DUTIES</b>		<b>14</b>
1	Duty to know the terms of Trust	14
2	Duty to act in accordance with the terms of Trust	14
3	Duty to act honestly and in good faith	14
4	Duty to act to further the permitted purpose of the Trust	14
5	Duty to exercise powers for a proper purpose	14
6	Duty of care	14
7	Duty to invest prudently	14
8	Duty not to exercise power for own benefit, duty to avoid conflicts of interest, duty not to profit and duty to act for no reward	14
9	Duty to consider exercise of power	15
10	Duty not to bind or commit Trustees to future exercise of discretion	15
11	Duty of impartiality	15
12	Duty to keep Core Trust Documents	15
<b>SCHEDULE 2: TRUSTEES' POWERS</b>		<b>17</b>
1	To raise funds	17
2	To receive or refuse gifts	17
3	To invest	17
4	To determine treatment of returns (income and capital) and apportionment	20
5	To borrow and give security	20
6	To lend	20
7	To hold and deal with real and personal property	21
8	To insure	21
9	To carry on business	22
10	To establish sub-committees of Trustees	23
11	To appoint persons to exercise or perform certain powers or functions	23
12	To delegate	24
13	To appoint special trust advisers	25
14	To enter into and vary contracts	26
15	Custody and use of common seal	26
16	To take legal, financial or other professional advice	26
17	To change the name of trusts	26
18	To change the Balance Date	26
19	To enter into alternative dispute resolution	26
<b>SCHEDULE 3: APPOINTMENT, RETIREMENT AND PROCEEDINGS OF THE TRUSTEES</b>		<b>28</b>

1	Number and composition of Trustees	28
2	Eligibility	28
3	Term of office	29
4	Rotation of Trustees	30
5	Election of Trustees	30
6	Casual vacancy in Trustees	32
7	Appointment of Trustees	32
8	Chairperson and Deputy Chairperson	33
9	Meetings of Trustees	33
10	Notice of meetings	33
11	Quorum	33
12	Annual General Meetings of trustees	34
13	Adjournment	34
14	Committees	34
15	Voting	35
16	Disclosure of interests	35
17	Minutes	36
18	Resolutions in writing	36
19	Meetings by telephone / video conferencing	36
20	Validity of proceedings	36
21	Execution of documents	36
	<b>SCHEDULE 4: CONSULTATIVE PROCEDURE</b>	<b>38</b>
	<b>SCHEDULE 5: MAP OF DISTRICT</b>	<b>39</b>
	<b>EXECUTION</b>	<b>40</b>

## **TECT COMMUNITY TRUST**

*Date:*

### **PARTIES**

**[Names]** (the *Trustees*)

### **BACKGROUND**

- A The Tauranga Energy Consumer Trust (*TECT*) was established in 1993 as part of the reforms of the energy sector. It was created to be a cornerstone shareholder in the newly established Trustpower Limited, the energy company that succeeded to the assets of the Tauranga Electric Power Board, and to share the benefits of ownership of that company with Trustpower consumers resident in the Tauranga and Western Bays district which it served, by way of payment of rebates and provision of grants and other benefits within the wider community of that district.
- B The original Trustpower was itself the subject of a restructuring in 2016. Following that restructuring, the original Trustpower entity was wound up and TECT became a shareholder in the successor entity, now called Trustpower Limited.
- C As a consequence of gradual changes in the electricity retail market in the District and the undertaking of a strategic review by Trustpower of its retail consumer business in early 2021, TECT itself undertook a restructuring. Pursuant to that restructuring, TECT determined to establish a new community trust that could better serve the wider needs of the Tauranga and Western Bays District (as contemplated by the TECT trust deed), and to settle into that new trust funds that were not needed for the continued servicing of its consumer beneficiary base.
- D Accordingly the Trustees wish to declare a charitable trust for the benefit of the people and community of the Tauranga and Western Bays district administered from time to time by the Tauranga City Council and the Western Bay of Plenty District Council, and for those purpose to receive from TECT the Initial Settlement Assets (including the shares then held by TECT in Trustpower Limited) referred to below.
- E Accordingly on signing this deed the Trustees declare they hold the Initial Settlement Sum on the trusts, for the Charitable Purposes and on and subject to the provisions of this deed.

### **NOW THIS DEED RECORDS:**

#### **1 DEFINITIONS AND CONSTRUCTION**

##### **1.1 Defined terms**

In this deed, unless the context requires otherwise:

*Annual General Meeting* means a meeting of Trustees specified as the annual general meeting in the notice calling the meeting;

*Annual Plan* has the meaning given to it in clause 6.3;

*Appointed Trustee* has the meaning given to it in clause 7 of Schedule 3;



*Balance Date* means the date up to which the Financial Statements for the Trust are to be made in each year and at the date of this deed is 31 March;

*Chairperson* means the Trustee elected as chairperson pursuant to rule 4 of Schedule 4;

*Charitable Purposes* means the charitable purposes of the Trust under clause 3 and a *Charitable Purpose* means one of those purposes;

*Chief Executive* means the chief executive of the Trust appointed from time to time by the Trustees;

*Confidential Information* means information which is by express classification or by its nature reasonably intended to be confidential to the Trust and which has not been released into the public domain by reason of:

- (a) the proper discharge in good faith by a Trustee of duties and obligations created by the Trust;
- (b) the proper discharge in good faith by a Trustee with the express authority or express consent of the Trust of duties and obligations created by the Trust;
- (c) the order or direction of any lawful or regulatory authority; or
- (d) other lawful action by a third party;

*Consultative Procedure* means the procedure for public consultation set out in Schedule 4;

*Core Trust Documents* means the documents that are to be kept by the Trustees pursuant to clause 12 of Schedule 1;

*Deputy Chairperson* means the Trustee elected as deputy chairperson pursuant to rule 4 of Schedule 4;

*Designated Gift* means a gift which is subject to a trust for a specific purpose that comes within the Charitable Purposes;

*District* means the areas which as at the date of this deed are administered by the Tauranga City Council and the Western Bay of Plenty District Council, as shown on the map set out in Schedule 5 of this deed;

*Elected Trustee* means each Trustee elected pursuant to the procedure in clause 5 of Schedule 3;

*Elector* means a natural person who at the Record Date:

- (a) is entered on the Parliamentary election rolls; and
- (b) has an address on those rolls within the District.

*Financial Statements* means the financial statements of the Trust prepared in accordance with clause 6.2;

*Financial Year* means any year or other accounting period ending on a Balance Date;

*Independent Returning Officer* means that person appointed to the office of Independent Returning Officer pursuant to clause 6.5 for the purposes of conducting and supervising any Trustee election held pursuant to Schedule 3;

*Initial Settlement Assets* means assets having an aggregate approximate value of [•] transferred to the Trustees by TECT on or about the date of this deed (including the shares in Trustpower held by TECT at that time) to be held on the trusts, for the Charitable Purposes and on and subject to the provisions of this deed;

*lacks capacity* and *lacks the capacity* means in relation to a person that the person is not competent to manage the person's own affairs for any reason including that the person:

- (a) is a person who is under the age of 18 years;
- (b) is a mentally disordered person under the Mental Health (Compulsory Assessment and Treatment) Act 1992;
- (c) is subject to an order appointing a manager under section 31 of the Protection of Personal and Property Rights Act 1988;
- (d) has a trustee corporation managing the person's property under section 32 or 33 of that Act; or
- (e) is a person who is not wholly competent to manage their own affairs in relation to their property and has been certified as mentally incapable under Part 9 of that Act,

and *loses capacity* and *losing capacity* will be construed accordingly;

*Record Date* means the date specified in clause 5.1(a)(v) of Schedule 3;

*Special Resolution* means a resolution of the Trustees passed by a majority of not less than seventy five per cent (75%) of the total number of Trustees in office at the time the Special Resolution is passed;

*Surplus Income* means income which the Trustees have not paid, applied or appropriated to or for a Charitable Purpose under clause 4.1 during an income year;

*Trustees* means the trustees from time to time of this Trust and includes the Appointed Trustees and the Elected Trustees;

*Trusts Act* means the Trusts Act 2019; and

*Trust Fund* or *Trust property* means the Initial Settlement Sum and includes any money, investments and other property paid to, earned by, given to, settled on, received and accepted by or in any other way acquired by the Trustees after the date of this deed with the intention that it is held by the Trustees on the trusts, for the objectives and on and subject to the provisions of this deed.

## 1.2 Construction

In the construction of this deed, unless the context requires otherwise:

- (a) a reference to *the Trust* is a reference to the charitable trusts of this deed;
- (b) a reference to *this deed* is a reference to this deed as amended from time to time;
- (c) a reference to *Trustees* or *Trustee* is a reference to the trustees or a trustee for the time being of the Trust Fund, whether original, additional or substituted;
- (d) a reference to a clause or a Schedule is to a clause or Schedule of this deed, and a reference in a Schedule to a clause is a reference to a clause in that Schedule;
- (e) a reference to a person includes a company, trustee corporation, and a body of persons, whether incorporated or unincorporated;
- (f) a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations that have been substituted for that enactment or those regulations;
- (g) references to *working days* are to days other than weekends and public holidays; and
- (h) headings appear as a matter of convenience and will not affect the construction of this deed.

## 2 CREATION OF THE TRUST

### 2.1 Declaration of trust

The Trustees declare that they hold the Trust Fund on the trusts, for the Charitable Purposes and with the powers and subject to the provisions of this deed.

### 2.2 Name of trusts

The trusts created by this deed are to be known as the "TECT Community Trust".

### 2.3 Incorporation under the Charitable Trusts Act 1957

- (a) The Trustees shall apply under the Charitable Trusts Act 1957 for Incorporation as a Board under the name TECT Community Trust, or under such other name as may be approved by the Registrar of Incorporated Societies.
- (b) If and while so registered, the Trustees will comply with the requirements of that Act.
- (c) Following incorporation as a Board all references in this deed to the Trustees may be read as references to the Trustees as a Board.

### 2.4 Registration under the Charities Act 2005

- (a) The Trustees shall apply to be registered as a charitable entity under the Charities Act 2005.

- (b) If and while so registered, the Trustees will comply with the requirements of that Act.

### **3 CHARITABLE PURPOSES**

#### **3.1 Purposes**

The Trust is established for the benefit of:

- (a) every object or purpose which is charitable in accordance with the laws of New Zealand (whether such object or purpose relates to the relief of poverty, the advancement of education or religion or any other matter beneficial to the community) in each case within the District; and
- (b) every other object or purpose which is charitable in accordance with the laws of New Zealand, wherever applied in New Zealand provided that such application benefits (directly or indirectly) members of the community within the District.

### **4 POWERS TO MAKE DISTRIBUTIONS**

#### **4.1 Discretionary power to pay, apply or appropriate income**

The Trustees may in their absolute discretion pay, apply or appropriate, all or any part of the income of the Trust Fund to or for one or more of the Charitable Purposes.

#### **4.2 Discretionary power to pay, apply or appropriate capital**

The Trustees may in their absolute discretion pay, apply or appropriate, all or any part of the capital of the Trust Fund to or for one or more of the Charitable Purposes.

#### **4.3 Provisions relating to payments, applications and appropriations of income and capital**

In making a payment, application or appropriation of income under clause 4.1 or capital under clause 4.2:

- (a) by way of modification to the Trustees' duty of impartiality under clause 11 of Schedule 1, the Trustees need not treat each Charitable Purpose equally;
- (b) the Trustees may transfer any Trust property for one or more of the Charitable Purposes in full or partial satisfaction or in anticipation of the payment, application or appropriation;
- (c) the Trustees may make an appropriation of income even though at the time of appropriation they have not received the income being appropriated;
- (d) any payment, application or appropriation of capital may be made either in addition to or in place of any payment, application or appropriation of income;
- (e) if the Trustees appropriate any income or capital for any Charitable Purpose, the recipient of that income or capital will take an absolute and indefeasible interest in that income or capital as from the date on which it is appropriated; and

- (f) the receipt of the secretary, treasurer or other person or persons appearing to the Trustees to be authorised to give receipts on behalf of the recipient of any income or capital will be a complete discharge to the Trustees for that payment.

#### **4.4 Accumulation of Surplus Income**

The Trustees will accumulate any Surplus Income and add it to the capital of the Trust Fund so that it becomes part of the Trust Fund, subject to the trusts and powers applicable to capital under this deed. The Trustees may however still resort to the accumulated Surplus Income at any time and pay, apply or appropriate all or part of it as if it were income of the Trust Fund.

### **5 APPOINTMENT, RETIREMENT AND PROCEEDINGS OF TRUSTEES**

The rules set out in Schedule 3 of this deed shall upon the execution of this deed govern the appointment, retirement and proceedings of the Trustees and associated matters.

### **6 TRUSTEES' DUTIES**

#### **6.1 General duties**

The Trustees have the duties set out in Schedule 1 and will perform those duties having regard to the context of the Trust, the Charitable Purposes and the terms of this deed.

#### **6.2 Financial Statements**

- (a) The Trustees shall ensure that full and correct accounts of all the financial transactions of the Trust and its assets and liabilities and funds are kept.
- (b) The Trustees shall within four months after the end of each Financial Year:
  - (a) prepare Financial Statements in accordance with generally accepted accounting practice (within the meaning of section 3 of the Financial Reporting Act 2013, applied as if the Trust was a reporting entity) with respect to the affairs of the Trust for that Financial Year;
  - (b) submit those Financial Statements to an auditor for audit; and
  - (c) make available to the public in accordance with clause 6.2(d) those audited Financial Statements and the auditor's report on those Financial Statements.
- (c) In addition to clause 6.2(a), the Financial Statements of the Trust shall show separately:
  - (a) the total amount of any distribution of income or capital paid, applied or appropriated by the Trustees in that Financial Year; and
  - (b) the names of persons or organisations to whom income or capital has been paid, applied or appropriated by the Trustees in that Financial Year.
- (d) The Trustees shall make the documents referred to in clause 6.2(c) available to the public (which includes all Electors) by making copies of them available on a website maintained by the Trust.

**6.3 Annual Plan and significant projects**

- (a) The Trustees shall prepare a written plan (an *Annual Plan*) describing the intentions of the Trustees with respect to distributions from the Trust in the next Financial Year.
- (b) The Trustees shall make the proposed Annual Plan for the forthcoming Financial Year available at least ten (10) working days in advance of its proposed adoption by the Trustees for inspection and comment by Electors, by publication on a website maintained by the Trust.
- (c) From time to time the Trustees shall also make available for inspection and comment by Electors, by publication on a website maintained by the Trust at least ten (10) working days in advance of any legally binding commitment by the Trustees to such projects, details of proposed projects which, in the opinion of the Trustees, are significant in the context of the Trust and the Trust Fund.

**6.4 Appointment of auditor**

- (a) The Trustees must appoint an auditor of the Trust Fund at each Annual General Meeting or whenever a vacancy shall occur in such appointment. The auditor shall be a member of the Institute of Chartered Accountants of New Zealand.
- (b) The Trustees shall fix the fees and expenses of the auditor.

**6.5 Appointment of Independent Returning Officer**

- (a) The Trustees must appoint an Independent Returning Officer at each Annual General Meeting or whenever a vacancy shall occur in such appointment. The Independent Returning Officer must be a person who, in the opinion of Trustees, is suitably qualified to act as an independent returning officer and who has no material conflict of interest with the Trust or its affairs.
- (b) The Trustees shall fix the fees and expenses of the auditor.

**6.6 Confidential Information**

- (a) The Trustees shall:
  - (a) keep confidential all Confidential Information (and its existence) which has been provided to or become available to either the Trust or Trustee(s);
  - (b) not disclose or otherwise publish Confidential Information, nor make any copies of, or record any extracts from, Confidential Information and must use their reasonable endeavours to ensure that to the extent possible by law no other person does so; and
  - (c) not use Confidential Information other than for the purpose of the proper discharge in good faith of duties and obligations created by the Trust, with the exception of Confidential Information provided in confidence to a professional advisor of the Trust or to a Trustee for the purposes of the obtaining of advice as to the discharge in good faith of duties and obligations created by the Trust and with the further expectation of compliance with any order or determination made by any Court or lawful authority.
- (b) Trustees acknowledge that a breach of Trusteeship dealing with matters of confidentiality and Confidential Information may amount to a breach of trust of such

a serious nature as to justify an expectation of resignation by the defaulting Trustee, failing which action by the Trust for removal from office may be proper.

**6.7 Restrictions on private pecuniary profit**

(a) No private pecuniary profit may be made by any person involved in this Trust (including any Trustee, any person appointed as the secretary or as an officer of the Trust, a person co-opted to a sub-committee of Trustees and a person appointed under clause 12 of Schedule 2), except that:

- (i) any Trustee and any person co-opted to a sub-committee will be entitled to be reimbursed out of the Trust Fund for all expenses which they reasonably and properly incur in connection with the affairs of the Trust;
- (ii) any Trustee and any person co-opted to a sub-committee may be paid reasonable and proper remuneration for services as Trustee or sub-committee member if and as agreed pursuant to this deed (in the case of the Trustees) or by the Trustees (in the case of any person co-opted to a sub-committee) from time to time;
- (iii) any secretary or other officer, a person appointed under clause 12 of Schedule 2 and any employee of the Trust (whether a Trustee or not) may be paid reasonable and proper remuneration for services rendered to the Trust if and as agreed by the Trustees from time to time;
- (iv) if any of the Trustees is engaged in a profession or business, that Trustee may charge reasonable and proper fees for work done by that Trustee or that Trustee's firm (whether or not the work is of a professional or business nature) on the same basis as if that Trustee were not one of the Trustees but had been employed to carry out the work on their behalf, if agreed by the Trustees from time to time; and
- (v) any Trustee may retain any remuneration properly payable to that Trustee by any company or undertaking with which the Trust may be in any way concerned or involved for which that Trustee has acted in any capacity whatever, notwithstanding that that Trustee's connection with that company or undertaking is in any way attributable to that Trustee's connection with the Trust if and as agreed by the Trustees from time to time.

(b) The Trustees, in determining all reimbursements, remuneration and charges payable in terms of this clause 6.7, will ensure that the restrictions imposed by this clause are strictly observed.

**6.8 Prohibition of benefit or advantage in business activity**

(a) In the carrying on of any business under this deed no benefit, advantage or income will be afforded to, or received, gained, achieved or derived by, any person where that person (or any associated person thereof as that term is defined in the Income Tax Act 2007) is able in any way (whether directly or indirectly) to determine, or to materially influence the determination of:

- (i) the nature or amount of that benefit, advantage or income; or
- (ii) the circumstances in which that benefit, advantage or income is, or is to be, so afforded, received, gained, achieved or derived.

- (b) A person who is in the course of, and as part of the carrying on of his or her business of a professional public practice, will not, by reason only of him or her rendering professional services to the Trust or to any company by which any business of the Trust is carried on, be in breach of the terms of this clause 6.8.

## **7 TRUSTEES' POWERS**

### **7.1 Trustees' general powers**

The Trustees have the following general powers:

- (a) all the powers necessary to manage the Trust property including, in relation to the Trust property, all the powers of an absolute owner of the property; and
- (b) all the powers necessary to carry out the Trust, including powers incidental to those in clause 7.1(a).

### **7.2 Trustees' specific powers**

Without prejudice to the generality of clause 7.1, or to any of the Trustees' express or implied powers under this deed and at law, the Trustees will have the specific powers set out in Schedule 2, and may exercise them either alone or with any other person or persons. The powers in Schedule 2 are not an exhaustive source or description of the specific powers of the Trustees.

### **7.3 Exercise of powers**

- (a) The Trustees may exercise their powers from time to time in such manner and on such terms and subject to such conditions as they may in their absolute and uncontrolled discretion determine, provided they do so having regard to their duties in law and under this deed.
- (b) The Trustees may not exercise their powers in any manner which may prejudice the charitable nature of the Charitable Purposes and in particular the meeting by the Trust of all the requirements for any exemptions available to charities under the New Zealand revenue laws.
- (c) Any exercise of the Trustees' powers and discretions will be subject to any direction to the contrary in any instrument evidencing or conferring a gift accepted by the Trustees, whether the gift is a Designated Gift or is generally for the purposes of the Trust Fund.

## **8 TRUSTEES' LIABILITY AND INDEMNITY**

### **8.1 Limitation of liability of Trustees**

- (a) A Trustee will be liable only for any loss suffered by the Trust Fund attributable to the Trustee's own dishonesty, wilful misconduct or gross negligence.
- (b) No Trustee will be liable for any other loss attributable to any breach of trust by the Trustee.
- (c) No Trustee will be liable for any loss attributable to any breach of trust by any co-Trustee and nor will any Trustee be bound to take, or be liable for failing to take, any proceedings against a co-Trustee for breach or alleged breach of trust.



**8.2 Trustees' indemnity and reimbursement**

A Trustee will be entitled to full and complete exoneration, indemnity and reimbursement from the Trust Fund for any and all liability and expense which that Trustee incurs in relation to the Trust (including in defending or prosecuting any proceedings in relation to the Trust) and which is not attributable to that Trustee's own dishonesty, wilful misconduct or gross negligence.

**8.3 Gross negligence**

For the purposes of clauses 8.1 and 8.2 *gross negligence* in relation to any conduct of a Trustee (including any action or inaction) means conduct that is so unreasonable that no reasonable trustee in the Trustee's position and in the same circumstances would have considered the conduct to be in accordance with the role and duties of a trustee having regard to the following factors:

- (a) the circumstances, nature, and seriousness of the breach of trust;
- (b) the Trustee's knowledge and intentions relating to the breach of trust;
- (c) the Trustee's skills and knowledge that are relevant to the role of trustee;
- (d) the purpose for which the Trustee was appointed;
- (e) any other circumstances, including whether the Trustee has been remunerated for the role, or characteristics of the Trustee that are relevant to the role of trustee;
- (f) the type of trust, including, without limitation, the degree to which the Trust is part of a commercial arrangement, the assets held by the trust, how the assets are used, and how the trust operates;
- (g) the purpose of the Trust, including, without limitation, what the Trust is intended to achieve, and whom the Trust is intended to benefit and in what ways; and
- (h) any other factor a court might consider relevant.

**8.4 Trustees' liability insurance**

- (a) The Trustees, in respect of one or more of the Trustees, may take out trustees' liability insurance for such cover (including defence cover) and on such terms as the Trustees think fit.
- (b) Rather than having such insurance arranged by the Trustees, a Trustee may take out personal trustees' liability insurance for such cover and on such terms as that Trustee thinks fit.
- (c) In each case, the reasonable cost of premiums is to be treated as a legitimate expense of the Trust, and may be paid directly from the Trust Fund or by way of reimbursement to the Trustees or Trustee.

## 9 INFORMATION

For the purpose of complying with any requirement under this deed to make any document or information available to the public, it shall be sufficient for the Trustees to make such document or information available for inspection:

- (a) on a website maintained by the Trust; and
- (b) at any office of the Trust or at any other place in the District during normal business hours on any business day.

## 10 REMUNERATION AND EXPENSES OF TRUSTEES

### 10.1 Remuneration for services

- (a) The Trustees shall be entitled in each Financial Year to such remuneration for their services as may be reasonable having regard to their duties and responsibilities as Trustees. Such remuneration shall be determined annually by the Trustees having regard to such factors as they reasonably determine but including without limitation remuneration paid to trustees of community trusts with trust funds of similar net value.
- (b) In the event of an increase in the total number of Trustees holding office, the Trustees may, without the authorisation of a Annual General Meeting, increase the total remuneration by such amount as is necessary to enable the additional Trustee or Trustees to receive remuneration, including provision for meeting allowances, not exceeding the average amount then being paid to each of the other Trustees (excluding the Chairperson).
- (c) The Trustees shall be entitled to be indemnified against, and reimbursed for, any expenses incurred by them in the exercise of their powers and duties under this deed.
- (d) The payments of remuneration and expenses to the Trustees pursuant to this clause 10 shall be paid out of the Trust Fund or any other fund available for that purpose.

### 10.2 Procedure for authorisation

- (a) No remuneration shall be paid to a Trustee pursuant to clause 10.1 unless that remuneration has been authorised by a resolution of Trustees passed by a simple majority at an Annual General Meeting. Each such resolution shall express Trustees' remuneration as either:
  - (i) a monetary sum per annum payable to all Trustees taken together; or
  - (ii) a monetary sum per annum, plus meeting allowances, payable to any person who from time to time holds office as a Trustee or as the Chairperson or as the Deputy Chairperson.
- (b) No resolution which increases the amount fixed pursuant to a previous resolution shall be passed at an Annual General Meeting unless notice of the amount of increase has been given in the notice of meeting.

## **11 INDEPENDENT RETURNING OFFICER**

### **11.1 Role of Independent Returning Officer**

The Independent Returning Officer shall be entrusted with the conduct of a Trustee election held pursuant to this Trust Deed.

### **11.2 Powers of Independent Returning Officer**

The Independent Returning Officer shall have power to and shall:

- (a) appoint such scrutineers and other assistants and delegate to them such powers and duties as it shall see fit;
- (b) provide for the due secrecy, fair conduct and professional nature of any Trustee election process which is to be undertaken in accordance with the relevant provisions of Schedule 1 (as amended from time to time) and the Code of Conduct;
- (c) generally do all things necessary, expedient or advisable in its opinion for the proper conduct of any Trustee election;
- (d) where circumstances arise which create doubt or uncertainty in any Trustee election process, seek, at the Trust's cost, independent advice in the form of a legal opinion on such matters and upon which it may rely in order to resolve or clarify such uncertainties; and
- (e) monitor statements which are brought to the attention of the Independent Returning Officer or which are made publicly by incumbent Trustees and/or election candidates in relation to any Trustee election to ensure that such statements are factually correct and not misleading. The Independent Returning Officer shall be entitled to require that person making offending statements to retract or correct such statements and may, if thought appropriate in the circumstances, publicly correct any misstatements or inaccuracies of fact on that persons behalf if they fail to do so in an appropriate manner and within an appropriate period of time and may disqualify a candidate from a Trustee election or take such other action that he/she may think fit in his/her sole discretion in order to meet the purpose and objectives of this Deed and the Code of Conduct in relation to a Trustee election.

### **11.3 Indemnification of Independent Returning Officer**

The Independent Returning Officer shall be entitled to be indemnified against the Trust Fund and be reimbursed for any reasonable expenses incurred by it in the exercise of its duties and powers under this Trust Deed.

## **12 VARIATIONS**

### **12.1 General power of variation**

The Trustees shall have the power by Special Resolution (of which notice to propose that Special Resolution shall have been given in the notice convening the meeting) to alter or amend the terms of this deed other than clause 12.2 and the provisions set out in clause 12.2 which shall only be capable of being altered or amended in the manner set out in clause 12.2.

**12.2 Restrictions**

(a) The Trustees shall have power on a unanimous resolution of all the Trustees after the Trustees have implemented a Consultative Procedure in respect of such proposal to alter or amend:

(a) the definition of "District"; and

(b) clauses 3, 4 or 13.

(b) Notwithstanding anything else in this deed, any variation to this deed that prejudices the charitable nature of the Trust and in particular the meeting by the Trust of all the requirements for any exemptions available to charities under the New Zealand revenue laws, will be invalid.

**13 WINDING UP**

**13.1 Power to wind up Trust**

The Trustees may at any time after first having implemented a Consultative Procedure resolve by unanimous resolution to wind up the Trust.

**13.2 Distribution upon winding up**

On the winding up of the Trust, the Trustees must give or transfer the Trust Fund remaining after the payment of costs, debts and liabilities to one or more other charitable organisations within the District chosen by the Trustees as having, in their unanimous opinion, charitable purposes within the District similar to the Charitable Purposes, on and subject to such terms as the Trustees may, in their absolute discretion, determine.

## SCHEDULE 1: TRUSTEES' DUTIES

- 1 Duty to know the terms of Trust**  
A Trustee must know the terms of the Trust.
- 2 Duty to act in accordance with the terms of Trust**  
A Trustee must act in accordance with the terms of the Trust.
- 3 Duty to act honestly and in good faith**  
A Trustee must act honestly and in good faith.
- 4 Duty to act to further the permitted purpose of the Trust**  
A Trustee must hold or deal with the Trust Fund and otherwise act to further the Charitable Purposes in accordance with the terms of the Trust.
- 5 Duty to exercise powers for a proper purpose**  
A Trustee must exercise the Trustee's powers for a proper purpose.
- 6 Duty of care**  
In administering the Trust (other than when exercising a discretion to distribute Trust property under clause 4), a Trustee must exercise the care and skill that is reasonable in the circumstances. However, a Trustee who has, or holds out as having, special knowledge or experience, or who acts in the course of a business or profession, will not be held to a higher (or different) standard than any other Trustee. For the purposes of sections 5(4) and 5(5) of the Trusts Act this clause 6 is to be regarded as a modification of section 29 of the Trusts Act.
- 7 Duty to invest prudently**  
In the exercise of the power of investment of Trust property, a Trustee must exercise the care and skill that a prudent person of business would exercise in managing the affairs of others. A Trustee who has, or holds out as having, special knowledge or experience, or who acts in the course of a business or profession, will not be held to a higher (or different) standard than any other Trustee. This clause 7 constitutes a contrary intention for the purposes of section 13D of the Trustee Act 1956 (for so long as that Act is in force). For the purposes of sections 5(4) and 5(5) of the Trusts Act this clause 7 is to be regarded as a modification of section 30 of the Trusts Act.
- 8 Duty not to exercise power for own benefit, duty to avoid conflicts of interest, duty not to profit and duty to act for no reward**  
The following duties:

  - (a) the duty in section 31 of the Trusts Act not to exercise a power directly or indirectly for the Trustee's own benefit;
  - (b) the duty in section 34 of the Trusts Act to avoid conflicts of interest;
  - (c) the duty in section 36 that a Trustee must not make a profit from the trusteeship of the Trust; and
  - (d) the duty in section 37 that a Trustee must not take any reward for acting as a Trustee,

are modified pursuant to sections 5(4) and 5(5) of the Trusts Act so that each Trustee may act as a Trustee and still contract or otherwise deal with the Trustees in his or her personal capacity or in any other capacity as if he or she had not been appointed as a Trustee and receive reimbursement, remuneration, fees or other profit on and to the extent provided in this deed and provided the Trustee acts honestly and in good faith, in furtherance of the Charitable Purposes and otherwise discharges the duties set out in clauses 1 to 5 of this Schedule.

**9 Duty to consider exercise of power**

Subject to clause 7.1(a) of this deed, a Trustee must actively and regularly consider whether the Trustee should exercise one or more of the Trustee's powers having regard to the nature of the power, the context of the Trust, the Charitable Purposes, the nature of the investments of the Trust and any other matters the Trustee considers relevant. For the purposes of sections 5(4) and 5(5) of the Trusts Act this clause 9 is to be regarded as a modification of section 32 of the Trusts Act.

**10 Duty not to bind or commit Trustees to future exercise of discretion**

The duty that a Trustee must not bind or commit the Trustees to a future exercise or non-exercise of a discretion is modified to the extent that a Trustee may bind or commit the Trustees to a future exercise or non-exercise of a discretion in relation to any matter relating to the Trust or the Trust Fund, if the Trustee considers it necessary or desirable for carrying out the Charitable Purposes of the Trust or any administrative or other functions of the Trustees and the Trustee acts honestly and in good faith, and otherwise discharges the duties set out in clauses 1 to 5 of this Schedule. For the purposes of sections 5(4) and 5(5) of the Trusts Act this clause 10 is to be regarded as a modification of section 33 of the Trusts Act.

**11 Duty of impartiality**

In the exercise of a discretion to pay, apply or appropriate income or capital under clause 4, a Trustee may favour one or more Charitable Purposes over another as provided in clause 4.3, notwithstanding that the exercise of the discretion may be directly or indirectly to the detriment of other Charitable Purposes. For the purposes of sections 5(4) and 5(5) of the Trusts Act this clause 11 is to be regarded as a modification of section 35 of the Trusts Act.

**12 Duty to keep Core Trust Documents**

**12.1** Each Trustee must keep, so far as is reasonable, the following Core Trust Documents relating to the Trust:

- (a) the Trust deed and any other document that contains the terms of the Trust;
- (b) any variations made to the Trust deed or Trust;
- (c) records of the Trust property that identify the assets, liabilities, income, and expenses of the Trust and that are appropriate to the value and complexity of the Trust property;
- (d) any records of Trustee decisions made during the Trustee's trusteeship;
- (e) any written contracts entered into during that Trustee's trusteeship;
- (f) any accounting records and financial statements prepared during that Trustee's trusteeship;

- (g) documents of appointment, removal, and discharge of Trustees (including any court orders appointing or removing trustees);
- (h) any other documents necessary for the administration of the Trust; and
- (i) any documents referred to in this clause that were kept by a former Trustee during that person's trusteeship and passed on to the current Trustee.

**12.2 If each Trustee holds at least:**

- (a) the Trust deed and any other document that contains the terms of the Trust; and
- (b) any variations made to the Trust deed or Trust or copies of those documents,

the Trustees may agree that one or more of their number holds all other Core Trust Documents in (a) to (i) above, provided the Trustees are satisfied that those documents (or copies of them) will be made available to the other Trustees on request.

**12.3 The Core Trust Documents must be kept for the duration of the Trustee's trusteeship. When that trusteeship ends, if the Trust continues, the Trustee must give at least one replacement Trustee or the continuing Trustees the Core Trust Documents held by the Trustee on the date the trusteeship ends.**

## **SCHEDULE 2: TRUSTEES' POWERS**

### **1 To raise funds**

To raise money for the Trust by any and all lawful means as the Trustees may in their absolute discretion decide from time to time, including the conduct of fundraising campaigns, for the following purposes:

- 1.1 the Charitable Purposes;
- 1.2 any specific Charitable Purpose; and
- 1.3 the general funds of the Trust including funds for administration and other costs and expenses of the Trust.

### **2 To receive or refuse gifts**

2.1 To receive solicited and unsolicited gifts of any real or personal property for the following purposes:

- (a) the Charitable Purposes;
- (b) any specific Charitable Purpose; and
- (c) the general funds of the Trust including funds for administration and other costs and expenses of the Trust.

2.2 To refuse to accept any gift (including a Designated Gift) if they determine that it is in the best interests of the Trust to do so.

2.3 To accept a Designated Gift provided the Trustees:

- (a) keep that Designated Gift and any income derived from it separate from the general funds of the Trust;
- (b) administer it as a separate specific trust in terms of the trust under which it was given;
- (c) do not use the assets of any separate specific trust to make good any deficit, loss, damage or breach of trust relating to any other separate specific trust; and
- (d) ensure that each separate specific trust bears its own administration costs and expenses plus a fair proportion (as determined by the Trustees) of the administration costs and expenses applicable to the general purposes of the Trust.

### **3 To invest**

3.1 To invest the Trust Fund, and the income from it, in any form of property, in accordance with the investment strategy formulated by the Trustees in accordance with clause 3.3 of this Schedule 2.

3.2 To transact and deal with any such investment in any manner as the Trustees may from time to time in their absolute discretion determine, including, but without limitation:



- (a) to hold, retain, realise, sell, exchange and vary an investment;
- (b) to deposit all or part of the Trust Fund with any bank, trust, company or other financial or investment institution in any jurisdiction in the world on any terms including on call or in an interest or non-interest bearing account and in any currency;
- (c) to open and maintain any bank accounts in any name(s) either on the Trustees own behalf or jointly with some other person(s), to overdraw any such account with or without giving security and authorise any one or more of the Trustees and any delegate(s) named in writing by all the Trustees to operate any such bank accounts;
- (d) to retain any investment notwithstanding it may be or is of a wasting, speculative or reversionary nature, may not produce income or might be decreasing or not increasing in value; and
- (e) to enter into any financial arrangement including any swap, hedging, derivative or other speculative or similar arrangement.

3.3 To formulate an overall investment strategy, and exercise their powers of investment and make investment decisions from time to time pursuant to that strategy, having regard to any matters the Trustees consider appropriate in their absolute discretion including, but without limitation, the following matters:

- (a) the context and objectives of the Trust;
- (b) the desirability or otherwise of diversifying Trust investments without any obligation to diversify between types and nature of investments (and for the avoidance of doubt it shall not be a breach of trust if the Trustees continue to hold shares or other securities issued by Trustpower Limited);
- (c) the nature of existing Trust investments and other Trust property;
- (d) any need to maintain the real value of the capital or income of the Trust;
- (e) the risk of capital loss or depreciation;
- (f) the potential for capital appreciation;
- (g) the likely income return;
- (h) the length of the term of the proposed investment;
- (i) the probable duration of the Trust;
- (j) the marketability of the proposed investment during, and on the expiry of, the term of the proposed investment;
- (k) the aggregate value of the Trust property;
- (l) the effect of the proposed investment in relation to the tax liability of the Trust; and

- (m) the likelihood of inflation affecting the value of the proposed investment or other Trust property.

3.4 In exercising their powers under clause 3.3 of this Schedule, provided any such investment is consistent with the Charitable Purposes, the Trustees may apply a responsible investment approach as follows:

- (a) A values based approach to selecting investments may be utilised giving preference to investments that are perceived to have positive social, sustainable, environmental, ethical or other similar effects rather than a more traditional risk/return approach;
- (b) Investments that the Trustees consider to have directly or indirectly harmful social, sustainable, environmental, ethical or other similar effects either by reference to sector or measured by ethical standards or environmental, social and governance ratings or performance may be rejected;
- (c) Investments made applying a responsible investment approach are expected to generate a financial return on capital, or at a minimum, a return of capital although targeted returns may range from concessionary, that is below a market rate of return to a risk adjusted market rate of return; and
- (d) A responsible investment approach requires a commitment to measure and report on the performance and progress of the investments against the social, sustainable, environmental, ethical or other similar objectives, ensuring transparency and accountability, and utilising standardised performance metrics or targets wherever possible.

In deciding whether to adopt such an approach the Trustees will have regard to any matters they consider appropriate in their absolute discretion.

3.5 To appoint any person as an investment manager to invest and manage all or any investments forming part of the Trust Fund in accordance with the overall investment strategy and any investment decisions made by the Trustees from time to time on such terms as the Trustees may from time to time in their absolute discretion determine, including regular review of the investment manager's performance, under clause 11.5 of this Schedule.

3.6 In exercising their powers under clause 3.3 of this Schedule, provided any such investment is consistent with the Charitable Purposes, the Trustees may apply principles of impact investing, that is investing with the intention of generating a measurable and beneficial social and/or environmental impact alongside a financial return as follows:

- (a) Impact investments require intentionality to the effect that an investment must be intended to have a clearly identified and positive social, sustainable or environmental impact;
- (b) Impact investments are expected to generate a financial return on capital, or at a minimum, a return of capital although targeted returns may range from concessionary, that is below a market rate of return to a risk adjusted market rate of return, and can be across all or any asset classes and can be made in developed or emerging markets;

- (c) Impact investing requires a commitment to measure and report on the performance and progress of the investments against the social, sustainable or environmental impacts, ensuring transparency and accountability, and utilising standardised performance metrics or targets wherever possible.

In deciding whether to adopt such an approach the Trustees will have regard to any matters they consider appropriate in their absolute discretion.

**4 To determine treatment of returns (Income and capital) and apportionment**

- 4.1 For the purposes of distribution, and of preparing and completing Financial Statements for the Trust, to determine whether a return on an investment is to be treated as income or capital.
- 4.2 To determine which expenses should be paid out of income and capital respectively and to apportion any receipt or outgoing relating to any period of time between the income and capital accounts, or charge any outgoing or credit any receipt exclusively to or from income or capital, transfer funds between capital and income accounts to recover or reimburse an outgoing previously charged to the account that is to receive the funds or recover or deduct any receipt previously credited to the account from which the funds are to be recovered, and deduct from income an amount to meet the cost of depreciation, and add the amount to capital.
- 4.3 To set up and maintain any depreciation or replacement funds for any purpose and determine the amount of income to be credited from time to time to any of those funds and whether those funds are income or capital.
- 4.4 A determination or apportionment under this clause 4 will be final and binding on all persons interested in the Trust Fund.

**5 To borrow and give security**

- 5.1 To borrow any money at such rate of interest and on such other terms and conditions as the Trustees may from time to time in their absolute discretion determine, including giving security for repayment over the entire Trust Fund or any part of it, whether or not any part over which the security is given benefits from the borrowing. A borrowing by the Trustees may include without limitation a loan from the trustees of TECT of all or a portion of the trust fund of TECT, including on a fixed rate of interest and otherwise be on such other terms as the Trustees determine.
- 5.2 To give any guarantee or indemnity on such terms and conditions as the Trustees may from time to time in their absolute discretion determine, including giving security for the guarantee or indemnity over the entire Trust Fund or any part of it, whether or not any part over which the security is given benefits from the guarantee or indemnity.

**6 To lend**

- 6.1 To make any loans or advances (with or without security and with or without payment of interest) to any person, in such manner and on such terms and conditions as the Trustees may from time to time in their absolute discretion determine.
- 6.2 To do any of the following in relation to any debts owing to the Trustees on such terms and conditions as the Trustees may from time to time in their absolute discretion determine:

- (a) waive any debts due to the Trust Fund, either absolutely or in part;
- (b) accept any property before the time at which it is transferable or payable;
- (c) pay or allow any debt or claim on any evidence which they may think sufficient;
- (d) accept any composition or any security for any debt or any property due to or claimed by the Trustees;
- (e) allow any time for payment of any debt; and
- (f) compromise, compound, abandon, or otherwise settle any debt, account, claim or otherwise relating to the Trust Fund including in any circumstance that may result in a loss to the Trust Fund.

**7 To hold and deal with real and personal property**

To do any of the following in relation to any real or personal property on such terms and conditions and otherwise in any manner as the Trustees may from time to time in their absolute discretion determine:

- (a) purchase as an asset of the Trust Fund any real or personal property or interest in property;
- (b) sell any real or personal property forming part of the Trust Fund, including, without limitation, allowing all or part of the purchase price to remain on loan, with or without security and with or without payment of interest, or to be payable by instalments;
- (c) postpone the sale of any real or personal property forming part of the Trust Fund for any period including in relation to any property that may be decreasing or not increasing in value or not producing any income;
- (d) let or licence any real and personal property, waive any breaches and accept surrenders of and terminate any leases, licences and tenancies;
- (e) subdivide and/or develop any real property forming part of the Trust Fund;
- (f) maintain, manage and improve any property, or any interest in any property;
- (g) grant, acquire, dispose of and exercise any option to purchase, lease or exchange any interest in real or personal property of any value, whether the option is incidental to, or independent of, any sale, lease, exchange or other disposition; and
- (h) enter into any type of contract whatever to protect, maintain or enhance the value of any real or personal property acquired or held by the Trustees or which they have the right to acquire or hold.

**8 To insure**

To insure any insurable Trust property to any amount up to its full insurable value, or at the Trustees' option, up to its full replacement value, against any risk including but without limitation, destruction or damage by fire, earthquake and fire following

earthquake and pay the premiums out of income or capital, in each case on such terms and conditions and otherwise in any manner as the Trustees may from time to time in their absolute discretion determine.

**9 To carry on business**

9.1 To carry on any business anywhere in the world, whether through a company, in partnership, limited partnership, joint venture or otherwise and generally to act in relation to that business in any manner the Trustees may from time to time in their absolute discretion determine, including, but without limitation:

- (a) to promote, form or concur in forming a company or companies for any purpose, including the purpose of acquiring any business or the assets of any business.;
- (b) to use any part of the Trust Fund as capital in the business through shares, notes, stock or debentures or other forms of equity or proprietorship, advances, loans, deposits or otherwise (with or without security and with or without payment of interest);
- (c) to employ in any business such managers, agents, employees and other persons (including any Trustee subject to clause 6.7 of this deed);
- (d) in respect of any company in which the Trust Fund has any interest, act as a director of the company and subject to clause 6.7 of this deed, receive and retain director's fees or other remuneration for acting as a director without having to account to the Trust Fund, unless the Trustees otherwise require;
- (e) to concur in the winding up, reconstruction or amalgamation of any company; and
- (f) to concur in the dissolution of any partnership, limited partnership or joint venture.

9.2 To determine in their absolute discretion whether any business losses in any year are to be borne by the capital of the Trust Fund or recouped out of later profits and in each year, and to distribute the net annual profits from any business as income without making good any earlier business losses.

9.3 In the sale of any business to a company, to accept payment for all or part of the purchase price in ordinary, deferred or preference shares (whether fully paid or partly contributory) or debentures or debenture stock of such company.

9.4 Notwithstanding that the Trust Fund owns a majority interest in any company, the Trustees may leave the conduct of the business of the company wholly to the officers of the company (including the payment of dividends or any distributions or other payments) and will not be bound to participate in, or interfere in, the management or conduct of any such company, or obtain additional information regarding the affairs of the company over and above the information that would ordinarily be available to a shareholder in the ordinary course of business, provided the Trustees have no notice of any misconduct on the part of the officers of the company.

**10 To establish sub-committees of Trustees**

- 10.1 Subject to clause 11.3 of this Schedule, to appoint a sub-committee or sub-committees of Trustees from time to time as they think necessary or desirable for carrying out the Charitable Purposes of the Trust and any administrative or other functions of the Trustees on such terms and conditions and otherwise in any manner as the Trustees may from time to time in their absolute discretion determine.
- 10.2 In particular, but without limitation, the Trustees may wish to appoint a Finance Sub-Committee to assist with the preparation of the annual report, Financial Statements and audit or review thereof and an Investment Sub-Committee to assist with formulation of an overall investment strategy and the investment of the Trust Fund under clause 3 of this Schedule.
- 10.3 A sub-committee may co-opt any other person or persons, (whether a Trustee or not and including a person appointed under clause 12 of this Schedule), to be a member of that sub-committee.
- 10.4 Subject to any directions that the Trustees might give, each sub-committee may regulate its own procedure.
- 10.5 Each sub-committee will report to the Trustees at each meeting of Trustees (or as the Trustees may otherwise direct) on their activities and any other relevant matter as the Trustees may direct.
- 10.6 Having made an appointment under this clause 10, the Trustees must keep the affairs of the sub-committee under review and if the circumstances make it appropriate to do so, consider whether they should intervene in any manner including, but without limitation, amending, revoking, terminating or replacing the sub-committee.

**11 To appoint persons to exercise or perform certain powers or functions**

- 11.1 On such terms and conditions and otherwise in any manner as the Trustees may from time to time in their absolute discretion determine:
- (a) to appoint a person to exercise or perform, on behalf of the Trustees, specified powers or functions in relation to the Trust;
  - (b) to appoint a person to make specified decisions in relation to all or part of the Trust property;
  - (c) to appoint an eligible person to hold or deal with all or part of the Trust property as nominee or custodian and vest all or part of the Trust property in that person.
- 11.2 For the purposes of clause 11.1(c) of this Schedule, an eligible person means:
- (a) a person who carries on a business that consists of or includes acting as a nominee or custodian; or
  - (b) a body corporate in which the Trustees have a controlling interest or the capacity to determine the outcome of decisions about the body corporate's financial and operating policies; or

- (c) a law firm.

11.3 However, the Trustees may not appoint a person under clause 11.1 of this Schedule to exercise or perform any of the following powers or functions:

- (a) a function that is, or is related to, the determination of whether, when, or in what way any Trust property should be distributed, used, possessed, or otherwise applied to any Charitable Purpose;
- (b) the powers to determine whether a return on investment is to be treated as income or capital, which expenses should be paid out of income and capital and apportionments of receipts and outgoings under clause 4 of this Schedule;
- (c) any other powers where the decision affects any payment, application or appropriation to a Charitable Purpose;
- (d) a right to apply to the court; and
- (e) the Trustees' powers under clause 11.1 of this Schedule and any other power conferred by statute or the terms of the Trust that are exercisable only by the Trustees personally.

11.4 The terms of appointment of any person appointed under clause 11.1 of this Schedule will include that the person appointed does not take on the duties of the Trustees, but must act in accordance with the terms of the appointment and with any directions of the Trustees and is liable to the Trustees for any failure to comply with those terms or directions.

11.5 Having made an appointment under clause 11.1 of this Schedule, the Trustees must keep the arrangements, and how those arrangements are being put into effect, under review and if the circumstances make it appropriate to do so, consider whether they should intervene in any manner including, but without limitation, amending, revoking, terminating or replacing the appointment.

11.6 The Trustees will not be liable for any act or default of any person appointed under clause 11.1 of this Schedule, unless the Trustees failed in any duty under clause 6 and Schedule 1 in appointing the person or failed to fulfil the obligations in clause 11.5 of this Schedule.

11.7 The act of an appointee appointed under clause 11.1 is not invalid by reason only of any defect in the appointment.

## 12 **To delegate**

12.1 After the Trusts Act comes into force, to delegate all or any Trustee powers and functions by power of attorney to any person (provided the person is not ineligible to be a Trustee under clause 2 of Schedule 3) if the delegation is necessary or the Trustee expects that it may from time to time become necessary because of the Trustee's:

- (a) absence from New Zealand;
- (b) temporary inability to be contacted;

- (c) temporary physical incapability; or
  - (d) temporary lack of capacity to perform the functions of a trustee.
- 12.2 Any delegation under clause 12.1 of this Schedule commences when the circumstance for the delegation begins or occurs and continues until either, the circumstance ceases, or for a maximum period of 12 months from commencement. If the circumstance is continuing at the end of the initial 12 month period, the delegation may be extended by the delegating Trustee (or the delegate, if the relevant circumstance is that the delegating Trustee is suffering from a lack of capacity to perform the functions of a trustee) until either, the circumstance ceases, or for a maximum further period of 12 months.
- 12.3 The delegating Trustee (or the delegate, if the relevant circumstance is that the delegating Trustee is incapable of doing so) must notify any co-Trustees within five (5) working days of the commencement of a delegation under clause 12.1 of this Schedule of:
- (a) the date the delegation commenced;
  - (b) the duration of the delegation;
  - (c) the name and contact details of the delegate;
  - (d) the reason for the delegation; and
  - (e) which of the Trustee's powers are delegated if only some are delegated.
- 12.4 If a power of attorney authorising delegation is executed by a Trustee because the Trustee expects the delegation may from time to time become necessary, the delegating Trustee (or the delegate, if the delegating Trustee is incapable) must within five (5) working days of the date of the power of attorney notify any co-Trustees:
- (a) the date of the power of attorney;
  - (b) the name and contact details of the delegate; and
  - (c) in which of the permitted circumstance under clause 12.1 of this Schedule the delegation commences.
- 12.5 The Trustees will not be liable for any act or default of a delegate, unless the Trustee failed in appointing the delegate in any duty under clause 6 and Schedule 1.
- 12.6 The act of a delegate is not invalid by reason only of any defect in the appointment.
- 13 To appoint special trust advisers**
- 13.1 After the Trusts Act comes into force, to appoint, on such terms and conditions and otherwise in any manner as the Trustees may from time to time in their absolute discretion determine, a special trust adviser to advise the Trustees on any matter relating to the Trust and any special trust adviser so appointed may be removed by the Trustees at any time.



- 13.2 The Trustees may consult a special trust advisor on any matter relating to the Trust but are not required to follow the special trust adviser's advice.
- 13.3 The Trustees will not be liable for any act or omission as a result of following the special trust adviser's advice unless the act or omission involves the Trustee's dishonesty, wilful misconduct or gross negligence.
- 13.4 If a special trust adviser disagrees with, or objects to, a proposed action by a Trustee, such disagreement or objection will not affect a person dealing with the Trustee in the matter.
- 13.5 A special trust adviser is not a Trustee and does not have the powers or duties of a Trustee.
- 13.6 A special trust adviser may be paid for the special trust adviser's services provided remuneration is payable to a Trustee. The remuneration paid will be fixed by the Trustees from time to time.
- 14 To enter into and vary contracts**  
On such terms and conditions and otherwise in any manner as the Trustees may from time to time in their absolute discretion determine:
- (a) to enter into any type of contract, commitment, arrangement or understanding to assume or reallocate risk, rewards, rights or obligations; and
  - (b) to vary, assign, novate, waive, terminate or otherwise deal with any contract, commitment, arrangement or understanding to which the Trustees are party.
- 15 Custody and use of common seal**  
If the Trustees become incorporated as a Board under the Charitable Trusts Act 1957, to adopt a common seal to be affixed to any deed to which the Trustees are a party provided the Trustees have given prior authorisation to the affixing of the common seal to the deed and the seal is affixed in the presence of any two Trustees who must sign the deed.
- 16 To take legal, financial or other professional advice**  
To take legal, financial or other professional advice in New Zealand or elsewhere on any matter relating to the Trust, the Trust Fund or to the Trustees' duties and powers, and in all matters to act in accordance with that advice.
- 17 To change the name of trusts**  
To change the name of the trusts created by this deed to any other name unanimously approved by the Trustees.
- 18 To change the Balance Date**  
To change the Balance Date to any other date unanimously approved by the Trustees provided all regulatory approvals to do so have been obtained.
- 19 To enter into alternative dispute resolution**
- 19.1 After the Trusts Act comes into force, to agree that any dispute that may give rise to legal proceedings, or any legal proceeding relating to the Trust, the Trust Fund or to the Trustees' duties and powers, and brought by or against a Trustee, between a

Trustee and a third party or between two or more Trustees, may be referred to an alternative dispute resolution process designed to facilitate the resolution of the matter.

- 19.2 Any agreement to enter into an alternative dispute resolution process under this clause 19 will be on such terms and conditions as the Trustees may from time to time in their absolute discretion agree with any other party to the dispute.
- 19.3 The Trustees will be under no obligation to agree to any alternative dispute resolution process notwithstanding the power to do so under this clause 19.
- 19.4 To take all steps necessary or desirable in the Trustees' absolute discretion to reach agreement on any matter referred to an alternative dispute resolution process including, without limitation:
- (a) payment from the Trust Fund of all or any costs and expenses in relation to the alternative dispute process;
  - (b) entering into an enforceable settlement agreement on such terms and conditions as the Trustees in their absolute discretion agree; and
  - (c) giving binding undertakings in relation to the matter (including undertakings that may bind or commit the Trustees to a future exercise or non-exercise of a discretion (notwithstanding, and by way of modification to, the Trustees' duty under clause 10 of Schedule 1).

### **SCHEDULE 3: APPOINTMENT, RETIREMENT AND PROCEEDINGS OF THE TRUSTEES**

#### **1 Number and composition of Trustees**

1.1 There shall be up to eight (8) Trustees being:

- (a) up to six (6) Trustees elected by Electors (*Elected Trustees*); and
- (b) if the Elected Trustees so decide, up to two (2) Trustees appointed by the Elected Trustees in accordance with clause 7 of this Schedule 3 (*Appointed Trustees*).

1.2 The first Trustees shall be the six (6) persons signing this deed as Trustees.

1.3 The Trustees must endeavour to hold collectively the skills to manage the Trust, in particular:

- (a) sufficient diversity among Trustees (for example, in relation to background, skillset, ethnicity, demographics, and gender) in order to ensure that the communities in the District and its needs are properly represented;
- (b) sufficient Trustees who have the skills required to manage the Trust Fund's investments (including compliance with financial and legal requirements);
- (c) Trustees who collectively have skills in governance, community experience and the social sector; and
- (d) sufficient institutional knowledge of the Trust's affairs retained amongst the Trustees to enable smooth operation of the Trust.

#### **2 Eligibility**

2.1 Subject to clause 2.2 of this Schedule 3, the following persons shall not be eligible for appointment as a Trustee and may not hold office as a Trustee:

- (a) an undischarged bankrupt;
- (b) a person who has been convicted of any offence punishable by a term of imprisonment of two or more years unless that person has obtained a pardon or has served the sentence or otherwise suffered the sentence imposed upon that person;
- (c) a person who has been sentenced to imprisonment for any offence unless that person has obtained a pardon or has served the sentence;
- (d) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company pursuant to the Companies Act 1993;
- (e) a person who lacks capacity to perform the functions of a trustee;
- (f) a person who does not otherwise qualify to be an officer of a charitable entity under section 16 of the Charities Act 2005;

- (g) a person who is not entered on the Parliamentary election rolls with an address in the District;
  - (h) the Chief Executive and any employees of or contractors to the Trust and any other office holder thereof;
  - (i) a person who is, or becomes, a member of Parliament in New Zealand;
  - (j) a person who is, or becomes, a councillor or other elected official of any local or regional authority whose territory includes any part of the District;
  - (k) a person who is, or becomes, a member (whether elected or appointed) of a Community Board (as that term is defined in the Local Government Act 2002) whose territory includes any part of the District; and
  - (l) a person who has previously served in aggregate three terms (including part terms) as a Trustee (whether as an Elected Trustee or an Appointed Trustee), whether or not such terms were served consecutively.
- 2.2 A person shall not be disqualified from appointment and may continue to hold that office:
- (a) in any case to which clause 2.1(b) of this Schedule 3 applies, until the expiration of the time for appealing against the conviction and, in the event of an appeal against conviction, until the appeal has been determined;
  - (b) in any case to which clause 2.1(c) of this Schedule 3 applies, until the expiration of the time for appealing against the sentence of imprisonment and, in the event of an appeal, until the appeal has been determined; and
  - (c) in any case to which clause 2.1(g) of this Schedule 3 applies, if the Trustee to which the clause applies is an Appointed Trustee who ceases to be entered on the Parliamentary electoral rolls with an address in the District.
- 3 Term of office**
- 3.1 The maximum duration of each term of office of a Trustee (whether an Elected Trustee or an Appointed Trustee) shall be four years, and no such Trustee may serve more than an aggregate of three terms (including part terms) as a Trustee, whether or not such terms are served consecutively.
- 3.2 A Trustee shall cease to hold office if:
- (a) the Trustee resigns by written notice to the Trustees;
  - (b) the Trustee is ineligible for election or appointment as a Trustee pursuant to clause 2.1 of this Schedule 3;
  - (c) the Trustee dies while holding office as a Trustee;
  - (d) the Trustee, being an Elected Trustee, is not re-elected, when the Trustee shall retire at an Annual General Meeting; or

- (e) the Trustee does not attend three (3) consecutive monthly Trustee meetings of which notice has been properly given without the prior consent of the remaining Trustees.
- 3.3 The provisions of clause 2.2 of this Schedule 3 shall apply, mutatis mutandis, to clause 3.1 of this Schedule 3. During any appeal period the Trustee shall be deemed to have taken leave of absence and shall not be capable of acting as a Trustee. If the conviction or sentence of imprisonment (as the case may be) is not upheld the Trustee shall be immediately reinstated. If the conviction or sentence (as the case may be) is upheld the disqualification as Trustee shall take immediate effect.
- 4 Rotation of Trustees**
- 4.1 From and including the first Annual General Meeting and at every second Annual General Meeting occurring thereafter, three (3) Elected Trustees shall retire from office.
- 4.2 The Elected Trustees to retire at any Annual General Meeting shall firstly be any Elected Trustee(s) (if any) appointed to fill any casual vacancy since the last Trustee election and secondly the required number of Elected Trustees (to make the number of retiring Elected Trustees three (3) in total) who have been longest in office since their election.
- 4.3 If there are more Elected Trustees due to retire than the required number of Elected Trustees to retire as determined in accordance with the previous sentence, then the Elected Trustees to retire shall be determined by lot. Such retiring Elected Trustees shall retire at the conclusion of the relevant Annual General Meeting.
- 4.4 The new Trustees who have been elected in accordance with clause 5 of this Schedule 3, who may, subject to the other provisions of this deed, include Trustees who have retired, shall be appointed at the conclusion of that Annual General Meeting.
- 5 Election of Trustees**
- 5.1 Other than an Appointed Trustee and any Trustee appointed to fill a casual vacancy, all Trustees shall be elected by the Electors in the following manner, or in such other manner as the Trustees may by Special Resolution determine from time to time:
  - (a) Not later than nine weeks before the proposed date of the election the Independent Returning Officer shall insert a notice on a website maintained by the Trust giving:
    - (i) advice of the proposed election;
    - (ii) the place or places at which nomination forms may be obtained;
    - (iii) where completed nominations may be lodged;
    - (iv) notice that the nominator, candidate and seconder must be, at the time of making the nomination, Electors; and
    - (v) the day and time nominations close.

- (b) Every nomination of a candidate shall be in writing and shall include:
    - (i) the full name and address of the candidate;
    - (ii) a statement by the candidate that the candidate is not, and to the best of the candidate's knowledge and belief will not be on the date of the election, disqualified from holding office as a Trustee by reason of any of the matters set out in clause 2.1 of this Schedule 3; and
    - (iii) the signature of the nominator and seconder and the candidate all of whom must be Electors.
  - (c) Nominations shall close four weeks after the first notice calling for nominations was given pursuant to clause 5.1(a) of this Schedule 3.
  - (d) If, on the closure of nominations, the number of valid nominations which have been received are equal to or less than the number of vacancies for the office of Trustee the Independent Returning Officer shall declare the candidates duly elected and no election shall be held.
  - (e) Should nominations be received for more than the number of vacancies, the Independent Returning Officer shall conduct an election of Trustees pursuant to this clause 5.1 using any form of electronic voting or such other method as directed by the Trustees. The Independent Returning Officer shall give, not less than three weeks prior to the date on and the time at which voting is to close (in this clause 5.1, the *Voting Period*), to the Electors, in such manner as the Independent Returning Officer shall deem fit, an electronic ballot paper which shall contain:
    - (i) the names of all candidates validly nominated in random order and appropriate provision for recording the Elector's vote;
    - (ii) if postal voting is to be used, a pre-paid envelope in which the ballot paper is to be placed and returned to the Independent Returning Officer; and
    - (iii) a written explanation of the method for recording the Elector's vote, the manner in which the ballot paper is to be returned, and the date and time at which the Voting Period is to close.
- Biographical and other details of the candidates may, if the Trustees approve, be included in the Information given to Electors.
- (f) The Independent Returning Officer shall, after close of the Voting Period, count the number of valid votes cast for each candidate and ascertain the candidates elected.
  - (g) A vote is invalid and shall not be counted if:
    - (i) the Elector votes for more candidates than there are Trustees to be elected; or

- (ii) in the opinion of the Independent Returning Officer, the ballot paper does not clearly indicate the candidate or candidates for whom the Elector intended to vote.
- (h) Where, because two (2) or more candidates have received the same number of valid votes, the Independent Returning Officer cannot determine which of them has been elected, the Independent Returning Officer shall decide which of them is elected by lot drawn by those candidates in the presence of the Independent Returning Officer and such other person or persons (if any) as the Independent Returning Officer may decide.
- (i) Forthwith after ascertaining which candidates have been elected, the Independent Returning Officer shall declare the names of the candidates so elected, and shall publish those names on the website of the Trust. The candidates elected shall be appointed Trustees at the conclusion of the relevant Annual General Meeting.
- (j) After declaring the result of the election the Independent Returning Officer shall decide when to destroy the voting papers and/ or to permanently delete any computer records or files relating to votes cast electronically.
- (k) Notwithstanding any other provision in the Deed (including the rules set out in this Schedule), the retiring Trustees shall remain in office until the conclusion of the Annual General Meeting at which they are to retire. Forthwith upon the conclusion of the relevant Annual General Meeting the candidates declared elected pursuant to this clause 5.1 shall assume office in place of the retiring Trustees.
- (l) The Electors who shall be entitled to vote for the appointment of Trustees shall be those persons who are Electors on the date nominations for candidates close as specified in accordance with clause 5.1(a)(v).

## **6 Casual vacancy in Trustees**

### **6.1 Any casual vacancy in the number of Elected Trustees:**

- (a) shall, in the case of a vacancy occurring more than 12 months prior to the next scheduled election of Trustees; or
- (b) may, in any other case, shall, in the case of a vacancy occurring more than 12 months prior to the next scheduled election of Trustees; or

be filled within 3 months of that vacancy occurring providing that the new appointee shall hold office only for the residue of the term of office of the Trustee whose place is taken.

## **7 Appointment of Trustees**

### **7.1 The following provisions shall apply in respect of Appointed Trustees:**

- (a) the Elected Trustees may by resolution (which must be unanimous) appoint any person as an Appointed Trustee, and remove from office any person so appointed by a simple majority. The Elected Trustees may at any time and for any period decide that there should be only one, or no Appointed Trustees;

- (b) in making any appointment, the Elected Trustees shall have regard to the skills, diversity and experience of the Elected Trustees, and shall endeavour to appoint a person or persons with skills that complement those of the Elected Trustees; and
  - (c) an Appointed Trustee shall cease to hold office on the date of the next Annual General Meeting after his or her appointment or re-appointment in accordance with this clause 7.1, but shall be eligible for re-appointment by the Elected Trustees at that time.
- 7.2 Any new appointee, either to fill a casual vacancy or as an Appointed Trustee, may be chosen at the discretion of the remaining Trustees having regard to the range and nature of skills of the appointee so that such skill set complements those of the remaining Trustees and which will add value to the good decision making by Trustees in their administration of the Trust.

## **8 Chairperson and Deputy Chairperson**

The Trustees shall elect a Chairperson and (should they so decide) Deputy Chairperson, who shall also be Trustees, at the first meeting of Trustees after the Annual General Meeting in each year and at any other time when either position becomes vacant.

## **9 Meetings of Trustees**

9.1 The Trustees shall, subject to clause 12 of this schedule 3, meet at such times and places as they may agree to dispatch the business of the Trust. The Trustees shall be entitled from time to time to develop protocols and standing orders for the management of Trustee behaviour and for the orderly conduct of Trustee meetings, and any such protocols and / or standing orders so adopted shall bind Trustees in their administration of the Trust.

9.2 Any three (3) or more Trustees may at any time summon a meeting of Trustees.

## **10 Notice of meetings**

10.1 Notice in writing of every meeting shall be sent by such method of delivery (whether electronic or otherwise) as is determined by the Trustees from time to time to each Trustee by the Chief Executive or other person acting under the direction of the Trustees or of the Chief Executive. In the case of a meeting summoned pursuant to clause 9.2 of this Schedule 3, the Trustees, Chief Executive, persons summoning the meeting or other person acting under the direction of the Trustees or Chief Executive, as the case may be, shall give at least five (5) working days' notice of that meeting. No notice shall be necessary for adjourned meetings except to Trustees not present when the meeting was adjourned.

10.2 Every notice of meeting shall state the place, day, and hour of the meeting and every notice of a meeting summoned pursuant to clause 9.2 of this Schedule 3 shall state the matters to be discussed at that meeting. Notice of any meeting may be abridged or waived if all the Trustees who are for the time being in New Zealand consent in writing to such abridgement or waiver.

## **11 Quorum**

11.1 A quorum at meetings of the Trustees shall comprise four (4) Trustees.



- 11.2 No business may be transacted at a meeting of Trustees if a quorum is not present, and the meeting shall be adjourned in accordance with clause 13 of this Schedule 3.

**12 Annual General Meetings of trustees**

- 12.1 The Trustees shall hold an Annual General Meeting of Trustees no later than by 30 November in each calendar year. The following provisions shall apply with respect to that Annual General Meeting:

- (a) The Chief Executive shall give no less than twenty (20) working days' notice of the Annual General Meeting to the Trustees such notice to specify the date, time and place of the Annual General Meeting.
- (b) The business to be transacted at the Annual General Meeting of Trustees shall be the receipt of the annual report (including a report on the performance of the Trust against its annual plan objectives for the relevant year), the annual plan and the audited Financial Statements and the setting of the remuneration (if any) of Trustees. Any other business shall be deemed special business and shall be dealt with in accordance with clause 12.1(c) of this Schedule 3.
- (c) Notice in writing of any special business shall be given to the Chief Executive no less than fifteen (15) working days prior to the Annual General Meeting. The Chief Executive shall circulate an agenda, including all special business, to the Trustees no later than ten (10) working days prior to the Annual General Meeting and shall also give to Electors not less than ten (10) working days prior written notice of the time, place, date and agenda of the Annual General Meeting by notice on a website maintained by the Trust.
- (d) Electors shall be entitled to attend and speak at the Annual General Meeting but shall not be entitled to vote at such meetings.

**13 Adjournment**

- 13.1 If a quorum is not present within thirty minutes after the time appointed for any meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as all Trustees who are entitled to vote may agree and, if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the Trustees present will constitute a quorum.
- 13.2 The Chief Executive will give written notice of a meeting which is adjourned pursuant to clause 13.1 of this Schedule 3 to all Trustees, which must be accompanied by the agenda for the adjourned meeting and any Trustee papers reasonably required to assist the Trustees to assess the matters due for consideration at the adjourned meeting.
- 13.3 Any meeting may be adjourned by the Chairperson upon the adoption of a resolution for its adjournment.

**14 Committees**

The Trustees may from time to time appoint any one or more Trustees to be a committee for making any inquiry, for considering supervising or transacting any business of the Trust, for the investment and management of the Trust Funds or any part thereof, or for the performance of any duty or function which in the opinion of the Trustees will further the purposes and objects of the Trust. Subject to these

rules and to any directions from time to time given by the Trustees every such committee may regulate its own procedure but so that a quorum at any meeting of the committee will be a majority of its members for the time being.

## **15 Voting**

- 15.1** Except as otherwise provided in this deed and subject to the quorum requirements as to meetings, the Trustees shall exercise their powers and discretions by a simple majority vote of the Trustees present.
- 15.2** The Chairperson or Deputy Chairperson acting as the chairperson of a meeting of Trustees shall have a second and casting vote in addition to his or her deliberative vote provided that such casting vote may only be exercised in the case of Trustee deadlock when voting on any particular issue.

## **16 Disclosure of Interests**

- 16.1** A Trustee will be interested in a transaction to which the Trust is a party if the Trustee:
- (a) is a party to, or will derive a material financial benefit from that transaction;
  - (b) has a material financial interest in another party to the transaction;
  - (c) is a director, officer or trustee of another party to, or person who will or may derive a material financial benefit from the transaction, not being a party that is wholly owned by the Trust;
  - (d) is the parent, child or spouse of another party to, or person who will or may derive a material financial benefit from the transaction; or
  - (e) is otherwise directly or indirectly interested in the transaction.
- 16.2** As soon as a Trustee becomes aware of the fact that they are interested in a transaction or proposed transaction with the Trust, they must disclose to their co-Trustees:
- (a) if the monetary value of the Trustee's interest is able to be quantified, the nature and monetary value of that interest; or
  - (b) if the monetary value of the Trustee's interest cannot be quantified, the nature and extent of that interest.
- 16.3** A disclosure of interest by a Trustee must be recorded in the minute book of the Trust. The Trustees shall record or cause to be recorded in the minute book of the Trust a disclosure of interests on behalf of all Trustees from time to time for such time as the Trustees of the Trust are the same persons as the trustees of TECT, and such disclosure shall be deemed to relate to, and be satisfactory for, all transactions or other dealings between the Trust and TECT or any entity controlled by TECT.
- 16.4** Although a Trustee who is interested in a transaction entered into or to be entered into by the Trust may not vote on a matter relating to the transaction, nor be included among the Trustees present at the meeting for the purpose of determining a quorum under clause 9 of this Schedule 3 the Trustee may:

- (a) attend a meeting of Trustees at which a matter relating to the transaction arises;
- (b) sign a document relating to the transaction on behalf of the Trust; and
- (c) do anything else as a Trustee in relation to the implementation of the transaction, as if he or she were not interested in the transaction.

**17 Minutes**

- 17.1 A minute book shall be provided and kept by the Trustees and all proceedings of the Trustees shall be entered in the minute book.
- 17.2 Minutes signed by the chairperson of the meeting at which the proceedings were transacted or by the chairperson of the next succeeding meeting shall be evidence of the proceedings.
- 17.3 Where minutes of the proceedings at any meeting of Trustees have been made in accordance with the provisions of these rules then, until the contrary is proved, the meeting shall be deemed duly held and convened and all proceedings at that meeting to have been duly conducted.

**18 Resolutions in writing**

Notwithstanding any other provisions in the Deed or these rules, a resolution in writing signed by all the Trustees or (as the case may be) by all the members of a committee, shall be as effective for all purposes as a resolution passed at a meeting of the Trustees or of such committee (as the case may be) duly convened, held and constituted. Such resolution may consist of several documents in the same form, each signed by one or more of the Trustees or members of the committee, (as the case may be).

**19 Meetings by telephone / video conferencing**

- 19.1 Notwithstanding any other provision in this deed or these rules, the contemporaneous linking together of a number of the Trustees or members of a committee (the *participants*) being not less than a quorum, together with the person acting as a secretary, shall be deemed to constitute a meeting and all the provisions in these rules as to meetings shall apply to such meetings by telephone or by video conferencing.
- 19.2 Minutes of the proceedings at such meeting shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the chairperson of the meeting or by a person acting as a secretary.

**20 Validity of proceedings**

All acts done by any meeting of Trustees or of a committee of Trustees or by any person acting as a Trustee shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Trustee or person acting as aforesaid or that they or any of them were for any reason disqualified, be as valid as if such person had been duly appointed and was qualified to be a Trustee.

**21 Execution of documents**

All documents required to be executed by the Trustees shall be deemed to be validly executed and binding on the Trust if these documents have been entered into and

**executed by the authority of the Trustees previously given and signed by at least two (2) Trustees or any other person approved by the Trustees for the purpose.**

#### **SCHEDULE 4: CONSULTATIVE PROCEDURE**

In respect of any provision of this deed which requires the Trustees to implement a Consultative Procedure, the Trustees shall:

- (a) Place notice of the proposal before a meeting of the Trustees.
- (b) Give notice of the proposal to Electors in accordance with clause 9 of the Trust Deed.
- (c) In every notice given under paragraph (b) of this Schedule, specify a period within which Electors interested in the proposal may make submissions on the proposal to the Trustees.
- (d) Ensure that any Elector who makes written submissions on the proposal within the period specified in the notice given under paragraph (b) of this Schedule is given a reasonable opportunity to be heard by the Trustees.
- (e) Ensure that every meeting at which submissions are heard are open to Electors.
- (f) Make all written submissions on the proposal (excluding address details of the submitters if so determined by the Trustees) available to Electors.

The period specified pursuant to paragraph (c) above shall be not less than one month and no more than three months.

**SCHEDULE 5: MAP OF DISTRICT**

[Attached]

**EXECUTION**

[Execution blocks for signing to be inserted]

# TAB 13





[TECT logo]

# Trust Deed

## TECT Consumer Trust

*Draft Consumer Trust Deed being the existing TECT Trust Deed (as at 19 October 2016) and including proposed edits*

draft

## **CONTENTS**

<b>1</b>	<b>DEFINITIONS AND CONSTRUCTION</b>	<b>1</b>
<b>2</b>	<b>NAME OF THE TRUST</b>	<b>4</b>
<b>3</b>	<b>DECLARATION OF TRUST</b>	<b>4</b>
<b>4</b>	<b>PURPOSE OF THE TRUST AND PRINCIPAL MEANING OF CONSUMERS</b>	<b>5</b>
<b>5</b>	<b>TRUSTS OF INCOME AND CAPITAL UNTIL TERMINATION DATE</b>	<b>5</b>
<b>6</b>	<b>TRUSTS OF CAPITAL AND INCOME ON THE TERMINATION DATE</b>	<b>7</b>
<b>7</b>	<b>APPOINTMENT, RETIREMENT AND PROCEEDINGS OF TRUSTEES</b>	<b>7</b>
<b>8</b>	<b>TRUSTEES' POWERS</b>	<b>7</b>
<b>9</b>	<b>DUTIES OF TRUSTEES</b>	<b>7</b>
<b>10</b>	<b>INFORMATION TO CONSUMERS</b>	<b>10</b>
<b>11</b>	<b>REMUNERATION OF TRUSTEES</b>	<b>10</b>
<b>12</b>	<b>VARIATION TO TRUST DEED</b>	<b>10</b>
<b>13</b>	<b>WINDING UP OF TRUST</b>	<b>11</b>
<b>14</b>	<b>LIABILITY AND INDEMNITY</b>	<b>11</b>
<b>15</b>	<b>NOTICES</b>	<b>12</b>
	<b>SCHEDULE 1 TRUSTEES' DUTIES</b>	<b>14</b>
	<b>SCHEDULE 2 APPOINTMENT, RETIREMENT AND PROCEEDINGS OF THE TRUSTEES</b>	<b>17</b>
	<b>SCHEDULE 3 CONSUMER CONSULTATIVE PROCEDURE</b>	<b>22</b>
	<b>SCHEDULE 4 MAP OF DISTRICT</b>	<b>23</b>
	<b>SCHEDULE 5 REBATE POLICY</b>	<b>24</b>



## **TRUST DEED**

DEED originally dated 21st day of December 1993 as varied on the Effective Date referred to below

### **BACKGROUND**

- A The TECT Consumer Trust was originally settled in 1993 by the legal predecessor to the current Trustpower Limited (company number 565426), to enable the Trustees to acquire shares in that predecessor entity (originally also called Trustpower Limited, but with company number 604040). The shares in that predecessor entity were vested in the Trustees in accordance with the establishment plan approved by the Minister of Energy at the time, under the Energy Companies Act 1992.
- B Pursuant to a scheme of arrangement in 2016, the original Trustpower Limited (company number 604040) underwent a demerger transaction and its assets and liabilities (other than certain wind and solar assets which were devolved to new company Tilt Renewables Limited) were transferred to the entity now known as Trustpower Limited (company number 565426).
- C As a consequence of continuing changes in the energy industry affecting the Trust, the Trustees, after undertaking a Consumer Consultative Procedure and obtaining the approval of the High Court, by unanimous resolution amended this Deed and undertook a restructuring of the Trust pursuant to which:
- C.1 a portion of the Trust Fund prior to such restructure was resettled in to a new community trust (the TECT Community Trust referred to below) to be held for community purposes within the District or which benefit persons resident in the District and which are charitable at law; and
- C.2 the balance of the Trust Fund is to be applied by the Trustees in accordance with the terms of the Trust Deed varied as of and from the date referred to above.
- D Pursuant to the Trust Deed as so varied, the Trustees will:
- D.1 apply the Trust Fund (subject to retention of such reserves as the Trustees determine) by way of loan to the TECT Community Trust;
- D.2 utilise the net annual income of the Trust Fund and the capital of the Trust Fund (as the Trustees determine) for the purposes of paying annual Rebates to Consumers; and
- D.3 upon the future termination or winding up of the Trust, apply the assets remaining in the Trust Fund for the benefit of the TECT Community Trust or entities within its control as further set out herein.

## **1 DEFINITIONS AND CONSTRUCTION**

- 1.1 In this Deed, unless the context otherwise requires:

*Annual General Meeting* means a meeting of Trustees specified as the annual general meeting of Trustees in the notice calling the meeting;

*Balance Date* means 31 March or any other date adopted from time to time by the Trust as the end of its Financial Year;

*Chief Executive* means the chief executive of the Trust (or similar most senior officer of the Trust, by whatever name) appointed from time to time by the Trustees or if at any time there is no such person appointed, the Chairperson of the Trust at the relevant time;

*Confidential Information* means information which is by express classification or by its nature reasonably intended to be confidential to the Trust and which has not been released into the public domain by reason of:

- (i) the discharge by a Trustee of duties and obligations created by the Trust, as set out in this Deed;
- (ii) the discharge by a Trustee with the express authority or express consent of the Trust of duties and obligations created by the Trust;
- (iii) the order or direction of any lawful or regulatory authority or otherwise as a consequence of the operation of any law or regulation;
- (iv) a request for disclosure pursuant to the Guidelines; or
- (v) other lawful action by a third party;

*Consumer* has the meaning given to it in clause 4.2;

*Consumer Consultative Procedure* means the procedure for consultation set out in Schedule 3;

*Deed* means this Deed and includes the schedules and any amendments;

*District* means:

- (i) the territory over which the Tauranga Electric Power Board constituted by the Electric Power Boards Act 1925 was authorised to supply electricity pursuant to a licence granted under section 20 of the Electricity Act 1968 immediately prior to the vesting of that Board's undertaking in the predecessor to Trustpower, and the vesting of the shares therein in the Trustees;
- (ii) the territory over which Tauranga Electricity Limited was authorised to supply electricity immediately prior to its merger with the legal predecessor to Trustpower in 1997 and includes, for the avoidance of doubt, that area comprising the Tauranga City peninsula north of the centreline of 17th Avenue, Tauranga,

as shown in the map attached as Schedule 4 to this Deed;

*Effective Date* means the date of the unanimous Trustee resolution referred to in Background C of this Deed;

*Financial Statements* means the financial statements of the Trust prepared in accordance with clause 9.3(a);

**Financial Year** means any year or other accounting period ending on a Balance Date;

**Guidelines** means those "Guidelines for Access to Trust Information by Consumers" (or any similar document) adopted, amended or superseded from time to time by a resolution of Trustees relating to the rights of Consumers to, and procedures relating to the disclosure of, Trust information;

**ICP** means, in respect of a Consumer, an installation control point (or equivalent) maintained by that Consumer for the delivery of electrical energy;

**Rebates** means the annual rebates payable to Consumers in accordance with, and as more extensively described in, clause 5;

**Rebate Policy** means the policy set out in Schedule 5 of this Deed;

**Record Date** means 28 January 2021;

**Residuary Beneficiary** means the TECT Community Trust as constituted pursuant to the TECT Community Trust Deed;

**Special Resolution** means a resolution of the Trustees passed by a majority of not less than seventy five per cent (75%) of the total number of Trustees in office at the time the Special Resolution is passed;

**TECT Community Trust** means the trust established pursuant to the TECT Community Trust Deed;

**TECT Community Trust Deed** means the deed of trust of the TECT Community Trust dated [•] 2021;

**TECT Community Trust Trustees** means the trustees for the time being of the TECT Community Trust, and **TECT Community Trust Trustee** means any one of them;

**Termination Date** means the date upon which the Trust ceases or is otherwise wound up in accordance with applicable law and clause 13 of this Deed;

**Third Party** has the meaning given to that term in clause 4.2(a) (including as further interpreted in clause 4.3);

the **Trust** means the trust established by this Deed;

the **Trustees** means the trustees for the time being of the Trust and **Trustee** means any one of them;

**Trust Fund** means all the funds of the Trust and includes all capital and income for the time being held by the Trustees of the Trust;

**Trustpower** means Trustpower Limited (company number 565426) and includes a company or other entity:

- (i) into which Trustpower is amalgamated, or combined pursuant to a scheme of arrangement, in each case in accordance with the provisions of the Companies Act 1993; or

- (ii) which acquires Trustpower pursuant to a takeover transaction, whether pursuant to the Takeovers Code or otherwise,

after the Effective Date; and

*Trusts Act* means the Trusts Act 2019.

1.2 In this Deed, unless the context otherwise requires:

- (a) references to one gender include each other gender;
- (b) references to the singular include the plural and vice versa;
- (c) the headings and the index shall not affect the construction of this Deed;
- (d) references to clauses are references to clauses of this Deed and references to schedules are references to schedules to this Deed;
- (e) references to a party, person or entity (other than a company) includes an individual, partnership, firm, company, body corporate, corporation, association, trust, estate, state, government or any agency thereof, municipal or local authority and any other entity, whether incorporated or not (in each case whether or not having a separate legal personality);
- (f) references to a statute include references to regulations, orders or notices made under or pursuant to such statute. References to any statute, regulations, order or other statutory instrument or by law shall be deemed to be references to the statute, regulation, order, instrument or by law as from time to time amended and includes substituted provisions that substantially correspond to those referred to;
- (g) references to *working days* are to days other than weekends and public holidays; and
- (h) words, terms or expressions which are defined in the Energy Companies Act 1992 but are not defined in this Deed shall have the meaning attributed to them in that Act.

## 2 **NAME OF THE TRUST**

The Trust shall be known as the TECT Consumer Trust or such other name as the Trustees may determine from time to time.

## 3 **DECLARATION OF TRUST**

The Trustees acknowledge and declare that they stand possessed of the Trust Fund, including the sum of \$100 originally settled on the Trustees on the 21st day of December 1993, together with all other moneys or property of whatever kind hereafter paid, given, or transferred to, vested in, or purchased or acquired by (or agreed to be transferred to or purchased or acquired by) the Trustees to be held upon the trust hereby declared and any accumulations of income therefrom and all moneys, investments and property of whatever kind from time to time representing

the same to be held upon the Trust and for the purposes and with the powers, authorities and discretions set out in this Deed.

#### **4 PURPOSE OF THE TRUST AND PRINCIPAL MEANING OF CONSUMERS**

4.1 The purposes and objects for which the Trust is established are:

- (a) To retain, hold, distribute, pay, apply or appropriate the income and the capital of the Trust Fund to Consumers in accordance with clause 5; and
- (b) Following the Termination Date to pay, apply and appropriate the capital and any retained income of the Trust for the benefit of the Residuary Beneficiary in the manner provided in clause 6.

4.2 For the purposes of this Deed a *Consumer* means each person who is named in the records of Trustpower as being liable to pay Trustpower any amount for electrical energy supplied or to be supplied to one or more ICPs situated in the District as at 9am on the Record Date provided that such person:

- (a) retains an obligation to pay Trustpower or a third party purchaser of all or a substantial part of Trustpower's business of supplying electrical energy to one or more ICPs in the District (a *Third Party*), as the case may be, any amount for electrical energy supplied by Trustpower or that Third Party to the Consumer's ICP or ICPs, as the case may be in accordance with the Eligibility Criteria set out in Part 1 of the Rebate Policy; and
- (b) otherwise at all times satisfies the Eligibility Criteria set out in Part 1 of the Rebate Policy.

4.3 For the purposes of clause 4.2 and each other usage of the term in this Deed, a *Third Party* shall include a company or other entity:

- (a) Into which the Third Party has amalgamated or been combined pursuant to a scheme of arrangement, in each case in accordance with the provisions of the Companies Act 1993; and
- (b) to which the Third Party has sold all or a substantial part of the business so acquired from Trustpower that relates to the supply of electricity in the District.

#### **5 TRUSTS OF INCOME AND CAPITAL UNTIL TERMINATION DATE**

The Trustees shall until the Termination Date stand possessed of the income arising from the Trust Fund and the capital of the Trust Fund upon the following trusts and with and subject to the following powers:

5.1 The Trustees shall from the net annual income derived by the Trust Fund (or if required from the capital of the Trust Fund) first pay all the fees, costs and disbursements of and incidental to administering the Trust, including (without limitation) costs incurred by the Trustees in pursuance of their duties and may in addition set aside reserves of income to provide for any payments or liabilities which the Trustees have power to pay pursuant to this clause 5 or otherwise under this Deed.



- 5.2 The Trustees shall out of the net annual income derived by the Trust Fund or from the capital of the Trust Fund pay an amount (the *Rebate*) to or for the benefit of each Consumer in an aggregate amount per annum described in clause 5.3 per ICP of that Consumer.
- 5.3 The amount of the Rebate payable to each Consumer (for the avoidance of doubt, to the extent to which the net annual income and capital of the Trust Fund is sufficient for such purposes) per ICP of that Consumer shall be:
- (a) in the annual period to 31 December 2021 and in each annual period thereafter to 31 December 2030, \$500 (provided that in the annual period to 31 December 2021 the Trustees shall make such adjustment to any payment of Rebates payable after the Effective Date as is appropriate taking into account any other rebates paid to Consumers in that annual period prior to the Effective Date, so as to result in an aggregate payment to Consumers for that annual period of, or as closer as possible to, \$500);
  - (b) in each annual period thereafter to 31 December 2040, \$600; and
  - (c) in each annual period thereafter to 31 December 2050, \$700.
- 5.4 The timing and manner of such payment shall otherwise be in accordance with the Procedures set out in Part 2 of the Rebate Policy.
- 5.5 Each Consumer to whom income or capital is paid by the Trustees pursuant to clause 5.2 shall, subject to clause 5.6, as from the date of such payment take an absolute and indefeasibly vested interest in such income or capital.
- 5.6 All payments made to Consumers unclaimed for one year after having been paid (or attempted to be so paid) may be invested or otherwise made use of by the Trustees for the benefit of the Trust Fund until claimed and the Trustees shall be entitled to mingle the amounts of any unclaimed payments or money from entitlements with other moneys forming part of the Trust Fund and to credit any income arising in any Financial Year from the investment of such unclaimed payments to the Trust Fund. Any amounts unclaimed on the earlier of the Termination Date or one year after that amount was paid (or attempted to be so paid) or notification thereof was provided to any Consumer (including by notification delivered to the last known address of that Consumer), in each case by or on behalf of the Trustees, shall thereupon be deemed to form part of the Trust Fund.
- 5.7 Each Trustee who is also a Consumer shall, notwithstanding the provisions of this Deed or any applicable rule of law or equity, be entitled to receive any benefits as a Consumer which may be distributed to Consumers in accordance with clause 5.2.
- 5.8 Subject to clause 5.2, the Trustees shall have power in their absolute discretion to accumulate so much of the net annual income of the Trust Fund as they think fit (where such net annual income is not otherwise required for the payment of Rebates to Consumers) by investing the same so that all such accumulations shall be added to and form part of the capital of the Trust Fund and be held by the Trustees upon the same trusts and with the powers herein declared in respect of such capital.

## **6 TRUSTS OF CAPITAL AND INCOME ON THE TERMINATION DATE**

From and after the Termination Date, the Trustees shall stand possessed of the remaining capital and Income of the Trust Fund, upon trust to pay, apply or distribute to the Residuary Beneficiary to be held and applied on and subject to the trusts of the TECT Community Trust Deed.

## **7 APPOINTMENT, RETIREMENT AND PROCEEDINGS OF TRUSTEES**

The rules set out in Schedule 2 of this Deed shall govern the appointment, retirement and proceedings of the Trustees and associated matters.

## **8 TRUSTEES' POWERS**

8.1 The Trustees have the following general powers:

- (a) all the powers necessary to manage the Trust property including, in relation to the Trust property, all the powers of an absolute owner of the property; and
- (b) all the powers necessary to carry out the Trust, including powers incidental to those in clause 8.1(a).

8.2 Without prejudice to the generality of clause 8.1 or to any of the Trustees' express or implied powers under this Deed and at law, the Trustees have the power to advance by way of loan all of the Trust Fund to the TECT Community Trust Trustees (subject to retention of such reserves as the Trustees determine). Such loan may be on a fixed rate of interest and otherwise on such terms as the Trustees in their discretion may determine, provided that the making of such loan does not preclude the Trustees from making the payment of Rebates contemplated by clause 5.

8.3 The Trustees may exercise their powers from time to time in such manner and on such terms and subject to such conditions as they may in their absolute and uncontrolled discretion determine, provided they do so having regard to their duties in law and under this Deed. Without prejudice to the generality of the foregoing, the Trustees shall ensure that in all dealings they have with the TECT Community Trust, they act in their capacities as Trustees appointed pursuant this Deed in accordance with their duties described in clause 9 and as further specified in Schedule 1.

8.4 In the exercise of any power, authority or discretion under this Deed the Trustees shall have no obligation to deal with persons other than those who are Consumers as defined in this Deed and in particular shall not be required to recognise any trust or other arrangement affecting any Consumer nor shall the Trustees be liable in any respect for any inaccuracies in the records of Trustpower (or any other person) which affect the status of any person as being or not being a Consumer.

## **9 DUTIES OF TRUSTEES**

9.1

- (a) The Trustees have the duties set out in Schedule 1 and will perform those duties having regard to the context of the Trust and the terms of this Deed.
- (b) In addition the Trustees shall have the specific duties set out in this clause 9.

- 9.2 The Trustees shall ensure that full and correct accounts of all the financial transactions of the Trust and its assets and liabilities and funds are kept.
- 9.3 The Trustees shall within four months after the end of each Financial Year:
- (a) prepare Financial Statements in accordance with generally accepted accounting practice (within the meaning of section 8 of the Financial Reporting Act 2013, applied as if the Trust was a reporting entity) with respect to the affairs of the Trust for that Financial Year;
  - (b) submit those Financial Statements to an auditor for audit; and
  - (c) make those audited Financial Statements and the auditor's report on those Financial Statements available to all Consumers in accordance with clause 9.9 and shall notify the fact that copies of such documents are so available by announcement on a website maintained by the Trust.
- 9.4
- (a) The Trustees shall in each Financial Year, hold a general meeting of Consumers at which the Consumers appoint an auditor to hold office from the conclusion of that meeting until the conclusion of the next general meeting of Consumers.
  - (b) The Trustees may fill any casual vacancy in the office of auditor by appointing an auditor to hold office until the conclusion of the next general meeting of Consumers (but, while the vacancy remains, the surviving or continuing auditor, if any, may continue to act as auditor).
  - (c) The fees and expenses of the auditor must be fixed:
    - (i) at the general meeting of Consumers or in the way the Consumers determine at the meeting, if appointed at the general meeting; or
    - (ii) by the Trustees, if appointed by the Trustees.
  - (d) The auditor of the Trust:
    - (i) must be a person who is qualified to act as an auditor under section 199(1) of the Companies Act 1993 and, in selecting an auditor, the Consumers may seek the advice of the Auditor-General; and
    - (ii) must not be a Trustee, employee or agent of the Trust or otherwise disqualified from being an auditor under section 199(2)(b) and (d) of the Companies Act 1993.
  - (e) In addition, sections 198, 200 and 202 to 207 of the Companies Act 1993 apply in relation to the auditor. These sections of the Companies Act 1993 apply as if references to a company were to the Trust, references to a director were to a Trustee, references to a board were to the Trustees, references to shareholders were to Consumers, and all other necessary modifications were made.

9.5

- (a) The Trustees must give no less than ten (10) working days' notice of the general meeting of Consumers on a website maintained by the Trust.
- (b) Every Consumer shall have one vote.
- (c) The quorum for that general meeting is 20 Consumers.
- (d) No business may be transacted at the general meeting of the Consumers if a quorum is not present.
- (e) Proceedings at the general meeting of Consumers shall be determined by the Chairperson of the Trust.

9.6

- (a) If no auditor is appointed in accordance with clause 9.5(a) or a casual vacancy in the office of auditor is not filled within one month of the vacancy occurring in accordance with clause 9.5(b), the Auditor-General shall be the auditor of the Trust.
- (b) The Trustees shall, within five (5) working days of clause 9.7(a) becoming applicable, give written notice to the Auditor-General of this fact.
- (c) If this clause 9.6 applies, the sections and parts of the Public Audit Act 2001 listed in section 19 of that Act shall apply to the Trust until an auditor is appointed at a general meeting of Consumers, as if references in those sections to a public entity were references to the Trust and with any other necessary modifications.

9.7 The Trustees shall, from time to time, make a copy of this Deed available to Consumers in accordance with clause 10.

9.8 The Trustees shall:

- (a) keep confidential all Confidential Information (and its existence) which has been provided to or become available to either the Trust or Trustee(s);
- (b) not disclose or otherwise publish Confidential Information, nor make any copies of, or record any extracts from, Confidential Information and must use their reasonable endeavours to ensure that to the extent possible by law no other person does so; and
- (c) not use Confidential Information other than for the purpose of the proper discharge in good faith of duties and obligations created by the Trust, with the exception of Confidential Information provided in confidence to a professional advisor of the Trust or to a Trustee for the purposes of the obtaining of advice as to the discharge in good faith of duties and obligations created by the Trust and with the further expectation of compliance with any order or determination made by any Court or lawful authority.

The Trustees acknowledge that a breach of Trusteeship dealing with matters of confidentiality and Confidential Information may amount to a breach of trust of such a serious nature as to justify an expectation of resignation by the defaulting Trustee, failing which action by the Trust for removal from office may be proper.

## 10 INFORMATION TO CONSUMERS

For the purpose of complying with any requirement under this Deed to make any document or information available to Consumers, it shall be sufficient for the Trustees to make such document or information available:

- (a) for inspection at every office of the Trust (during ordinary office hours);
- (b) at any other place or in any other manner specified by the Trustees and notified to Consumers; or
- (c) on a website maintained by the Trust,

in each case free of charge.

## 11 REMUNERATION OF TRUSTEES

No Trustee shall be entitled in any Financial Year to remuneration for their services as a Trustee.

## 12 VARIATION TO TRUST DEED

12.1 The Trustees shall have the power by Special Resolution (of which notice to propose that Special Resolution shall have been given in the notice convening the meeting) to alter or amend the terms of this Deed other than:

- (a) clause 12.2 and the provisions set out in clause 12.2 which shall only be capable of being altered or amended in the manner set out in clause 12.2; and
- (b) the definition of "Residuary Beneficiary", clauses 5.3, 5.4, 6, 7, this clause 12.1(b) and clause 13, which may not be altered or amended by the Trustees.

12.2 The Trustees shall have power to alter or amend:

- (a) the definitions of "Consumers", "District", "Rebate" and "Rebate Policy";
- (b) clauses 4, 5 (other than clauses 5.3 and 5.4), and 9.3; and
- (c) Schedule 5 of this Deed,

in accordance with the following procedure:

- (i) the Trustees implement a Consumer Consultative Procedure in respect of the proposed alteration or amendment;
- (ii) Consumers approve the alteration or amendment by way of poll whereby each Consumer has one vote (regardless for the avoidance of

doubt of the number of ICPs attributable to that Consumer) and a majority of not less than seventy five percent (75%) of the votes received are in favour of the alteration or amendment;

- (iii) the alteration or amendment is approved by a unanimous resolution of all the Trustees; and
- (iv) if the Trustees consider based on legal advice that the approval of the High Court of New Zealand is necessary or advisable in respect of such alteration or amendment, the approval of that High Court.

### **13 WINDING UP OF TRUST**

13.1 The Trustees shall wind up the Trust on 31 December 2050.

13.2 Notwithstanding clause 13.1, the Trustees may wind up the Trust at any time prior to 31 December 2050, provided that:

- (a) the Trustees are of the opinion that the Trust Fund is not sufficient to enable the payment of the Rebate payment (or semi-annual instalment thereof) next falling due to Consumers, after taking into account other liabilities and expenses required to be met out of the Trust Fund; or
- (b) the Trustees have otherwise first followed the procedure for altering or amending this Deed set out in clause 12.2 (as if such procedure was expressly stated to apply to a winding up of the Trust).

13.3 On the winding up of the Trust, all surplus assets after the payment of all costs, debts and liabilities shall be paid, applied or appropriated to or for or otherwise howsoever in accordance with clause 6.

### **14 LIABILITY AND INDEMNITY**

14.1

- (a) A Trustee will be liable only for any loss suffered by the Trust Fund attributable to the Trustee's own dishonesty, wilful misconduct or gross negligence.
- (b) No Trustee will be liable for any other loss attributable to any breach of trust by the Trustee.
- (c) No Trustee will be liable for any loss attributable to any breach of trust by any co-Trustee and nor will any Trustee be bound to take, or be liable for failing to take, any proceedings against a co-Trustee for breach or alleged breach of trust.

14.2 A Trustee will be entitled to full and complete exoneration, indemnity and reimbursement from the Trust Fund for any and all liability and expense which that Trustee incurs in relation to the Trust (including in defending or prosecuting any proceedings in relation to the Trust) and which is not attributable to that Trustee's own dishonesty, wilful misconduct or gross negligence.

14.3 For the purposes of this clause 14 "gross negligence" in relation to any conduct of a Trustee (including any action or inaction) means conduct that is so unreasonable that no reasonable trustee in the Trustee's position and in the same circumstances would have considered the conduct to be in accordance with the role and duties of a trustee having regard to the following factors:

- (a) the circumstances, nature, and seriousness of the breach of trust;
- (b) the Trustee's knowledge and intentions relating to the breach of trust;
- (c) the Trustee's skills and knowledge that are relevant to the role of trustee;
- (d) the purpose for which the Trustee was appointed;
- (e) any other circumstances, including whether the Trustee has been remunerated for the role, or characteristics of the Trustee that are relevant to the role of trustee;
- (f) the type of trust, including, without limitation, the degree to which the Trust is part of a commercial arrangement, the assets held by the trust, how the assets are used, and how the trust operates;
- (g) the purpose of the Trust, including, without limitation, what the Trust is intended to achieve, and whom the Trust is intended to benefit and in what ways; and
- (h) any other factor a court might consider relevant.

14.4

- (a) The Trustees, in respect of one or more of the Trustees, may take out trustees' liability insurance for such cover (including defence cover) and on such terms as the Trustees think fit.
- (b) Rather than having such insurance arranged by the Trustees, a Trustee may take out personal trustees' liability insurance for such cover and on such terms as that Trustee thinks fit.
- (c) In each case, the reasonable cost of premiums is to be treated as a legitimate expense of the Trust, and may be paid directly from the Trust Fund or by way of reimbursement to the Trustees or Trustee.

## 15 NOTICES

15.1 Any notices or documents to be given to the Trustees pursuant to this Deed shall be in writing signed by the person giving the notice and served at the office of the Trust.

15.2 Any notice or document given pursuant to clause 15.1 shall be deemed to be duly given or made:

- (a) if delivered by hand, when so delivered;

- (b) if sent by post, on the third working day after posting;
- (c) if sent by email, on the date and time at which it enters the addressee's information system (as shown in a confirmation of delivery report from the sender's information system, which indicates that the email was sent to the email address of the Trust as set out on its website).

**IN WITNESS WHEREOF** this Deed has been executed the day and year first hereinbefore written.

draft



## SCHEDULE 1

### TRUSTEES' DUTIES

- 1 **Duty to know the terms of Trust:** A Trustee must know the terms of the Trust.
- 2 **Duty to act in accordance with the terms of Trust:** A Trustee must act in accordance with the terms of the Trust.
- 3 **Duty to act honestly and in good faith:** A Trustee must act honestly and in good faith.
- 4 **Duty to act for benefit of beneficiaries:** A Trustee must hold or deal with the Trust Fund and otherwise act for the benefit of the beneficiaries of the Trust, in accordance with the terms of the Trust.
- 5 **Duty to exercise powers for a proper purpose:** A Trustee must exercise the Trustee's powers for a proper purpose.
- 6 **Duty of care:** In administering the Trust (other than when exercising a discretion to distribute Trust property), a Trustee must exercise the care and skill that is reasonable in the circumstances. However, a Trustee who has, or holds out as having, special knowledge or experience, or who acts in the course of a business or profession, will not be held to a higher (or different) standard than any other Trustee. For the purposes of sections 5(4) and 5(5) of the Trusts Act this clause is to be regarded as a modification of section 29 of the Trusts Act.
- 7 **Duty to invest prudently:** In the exercise of the power of investment of Trust property, a Trustee must exercise the care and skill that a prudent person of business would exercise in managing the affairs of others. A Trustee who has, or holds out as having, special knowledge or experience, or who acts in the course of a business or profession, will not be held to a higher (or different) standard than any other Trustee. For the purposes of sections 5(4) and 5(5) of the Trusts Act this clause is to be regarded as a modification of section 30 of the Trusts Act.
- 8 **Duty not to exercise power for own benefit, duty to avoid conflicts of interest, duty not to profit and duty to act for no reward:** The following duties:
  - (a) the duty in section 31 of the Trusts Act not to exercise a power directly or indirectly for the Trustee's own benefit;
  - (b) the duty in section 34 of the Trusts Act to avoid conflicts of interest;
  - (c) the duty in section 36 that a Trustee must not make a profit from the trusteeship of the Trust; and
  - (d) the duty in section 37 that a Trustee must not take any reward for acting as a Trustee,

are modified pursuant to sections 5(4) and 5(5) of the Trusts Act so that each Trustee may act as a Trustee and still contract or otherwise deal with the Trustees in his or her personal capacity or in any other capacity (including without limitation as

a TECT Community Trust Trustee) as if he or she had not been appointed as a Trustee and receive reimbursement, remuneration, fees or other profit on and to the extent provided in this Deed and provided the Trustee acts honestly and in good faith, in furtherance of the purposes for which this Trust is maintained and otherwise discharges the duties set out in clauses 1 to 6 of this Schedule.

- 9 **Duty to consider exercise of power:** A Trustee must actively and regularly consider whether the Trustee should exercise one or more of the Trustee's powers having regard to the nature of the power, the context of the Trust, the nature of the Investments of the Trust and any other matters the Trustee considers relevant. For the purposes of sections 5(4) and 5(5) of the Trusts Act this clause 9 is to be regarded as a modification of section 32 of the Trusts Act.
- 10 **Duty not to bind or commit Trustees to future exercise of discretion:** The duty that a Trustee must not bind or commit the Trustees to a future exercise or non-exercise of a discretion is modified to the extent that a Trustee may bind or commit the Trustees to a future exercise or non-exercise of a discretion in relation to any matter relating to the Trust or the Trust Fund, if the Trustee considers it necessary or desirable for carrying out the purposes for which the Trust is maintained or any administrative or other functions of the Trustees and the Trustee acts honestly and in good faith, and otherwise discharges the duties set out in clauses 1 to 5 of this Schedule. For the purposes of sections 5(4) and 5(5) of the Trusts Act this clause 10 is to be regarded as a modification of section 33 of the Trusts Act.
- 11 **Duty to keep Core Trust Documents:**
- 11.1 Each Trustee must keep, so far as is reasonable, the following Core Trust Documents relating to the Trust:
- (a) the Trust Deed and any other document that contains the terms of the Trust;
  - (b) any variations made to the Trust Deed or Trust;
  - (c) records of the Trust property that identify the assets, liabilities, income, and expenses of the Trust and that are appropriate to the value and complexity of the Trust property;
  - (d) any records of Trustee decisions made during the Trustee's trusteeship;
  - (e) any written contracts entered into during that Trustee's trusteeship;
  - (f) any accounting records and financial statements prepared during that Trustee's trusteeship;
  - (g) documents of appointment, removal, and discharge of Trustees (including any court orders appointing or removing Trustees);
  - (h) any other documents necessary for the administration of the Trust; and
  - (i) any documents referred to in this clause that were kept by a former Trustee during that person's trusteeship and passed on to the current Trustee.

**11.2** If each Trustee holds at least:

- (a) the Trust Deed and any other document that contains the terms of the Trust;  
and
- (b) any variations made to the Trust Deed or Trust or copies of those documents,

the Trustees may agree that one or more of their number holds all other Core Trust Documents in clause 11.1 above, provided the Trustees are satisfied that those documents (or copies of them) will be made available to the other Trustees on request.

**11.3** The Core Trust Documents must be kept for the duration of the Trustee's trusteeship. When that trusteeship ends, if the Trust continues, the Trustee must give at least one replacement Trustee or the continuing Trustees the Core Trust Documents held by the Trustee on the date the trusteeship ends.

draft

## SCHEDULE 2

### APPOINTMENT, RETIREMENT AND PROCEEDINGS OF THE TRUSTEES

#### 1 NUMBER OF TRUSTEES

The minimum and maximum numbers of Trustees of the Trust from time to time shall be the same as those prescribed for the TECT Community Trust pursuant to the TECT Community Trust Deed.

#### 2 APPOINTMENT AND RETIREMENT

- (a) The Trustees of the Trust shall at any time be those same persons who are validly elected, or appointed, and continuing in the office of a TECT Community Trust Trustee pursuant to the TECT Community Trust Deed at that time.
- (b) For the avoidance of doubt, where a person pursuant to the TECT Community Trust Deed:
  - (i) is validly elected, or appointed, to the office of trustee of the TECT Community Trust;
  - (ii) resigns or is removed from the office of trustee of the TECT Community Trust; or
  - (iii) is no longer eligible to hold office as a trustee of the TECT Community Trust,

then such person shall also be, and be deemed to be (without further action being required to be taken), appointed to, resign from, or be removed from the office of Trustee of the Trust.

- (c) The Trustees acknowledge and agree that should they retire or be removed as a Trustee of the TECT Community Trust, then they will also retire as or otherwise cease to be a trustee of the Trust and will take all steps and complete all necessary documents to action and confirm the same. If notwithstanding the forgoing provisions of this clause 2 of this Schedule 2, any provision in this clause 2 deeming a Trustee to be elected or appointed to, or resigned or otherwise removed from, the office of Trustee is ineffective, then the statutory power of appointing new or replacement Trustees, and the power to remove Trustees, shall be vested in the TECT Community Trust Trustees.
- (d) Upon every change of trustees, the Trust Fund shall be vested in the Trustees for the time being in office.

#### 3 CHAIRPERSON AND DEPUTY CHAIRPERSON

The persons who are elected as Chairperson and (if applicable) Deputy Chairperson of the TECT Community Trust by the TECT Community Trust Trustees from time to time shall be deemed to be elected as Chairperson and (if applicable) Deputy Chairperson of the Trust for such time.

**4 MEETINGS OF TRUSTEES**

- (a) The Trustees shall, subject to clause 7 of this Schedule 2, meet at such times and places as they may agree to dispatch the business of the Trust. The Trustees shall be entitled from time to time to develop protocols and standing orders for the management of Trustee behaviour and for the orderly conduct of Trustee meetings, and any such protocols and / or standing orders so adopted shall bind Trustees in their administration of the Trust.
- (b) Any three (3) or more Trustees may at any time summon a meeting of Trustees.

**5 NOTICE OF MEETINGS**

- (a) Notice in writing of every meeting shall be sent by such method of delivery (whether electronic or otherwise) as is determined by the Trustees from time to time to each Trustee by the Chief Executive or other person acting under the direction of the Trustees or of the Chief Executive. In the case of a meeting summoned pursuant to clause 4(b) of this Schedule 2, the Trustees, Chief Executive, persons summoning the meeting or other person acting under the direction of the Trustees or Chief Executive, as the case may be, shall give at least five (5) working days' notice of that meeting. No notice shall be necessary for adjourned meetings except to Trustees not present when the meeting was adjourned.
- (b) Every notice of meeting shall state the place, day, and hour of the meeting and every notice of a meeting summoned pursuant to clause 4(b) of this Schedule 2 shall state the matters to be discussed at that meeting. Notice of any meeting may be abridged or waived if all the Trustees who are for the time being in New Zealand consent in writing to such abridgement or waiver.

**6 QUORUM FOR TRUSTEE MEETINGS**

- (a) A quorum at meetings of the Trustees shall comprise four (4) Trustees.
- (b) No business may be transacted at a meeting of Trustees if a quorum is not present, and the meeting shall be adjourned in accordance with clause 8 of this Schedule 2.

**7 ANNUAL GENERAL MEETING OF TRUSTEES**

The Trustees shall hold an Annual General Meeting of Trustees no later than by 30 November in each calendar year. The following provisions shall apply with respect to that Annual General Meeting:

- (a) The Chief Executive shall give no less than twenty (20) working days' notice of the Annual General Meeting to the Trustees such notice to specify the date, time and place of the Annual General Meeting.
- (b) The business to be transacted at the Annual General Meeting of Trustees shall be the receipt of the annual report (including a report on the performance of the Trust against its annual plan objectives for the relevant year), the annual plan and the audited Financial Statements. Any other business shall be

deemed special business and shall be dealt with in accordance with clause 7(c) of this Schedule 2.

- (c) Notice in writing of any special business shall be given to the Chief Executive no less than fifteen (15) working days prior to the Annual General Meeting. The Chief Executive shall circulate an agenda, including all special business, to the Trustees no later than ten (10) working days prior to the Annual General Meeting and shall also give to Consumers not less than ten (10) working days' prior written notice of the time, place, date and agenda of the Annual General Meeting by notice on a website maintained by the Trust.

## **8 ADJOURNMENT OF TRUSTEE MEETINGS**

- (a) If a quorum is not present within thirty minutes after the time appointed for any meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as all Trustees who are entitled to vote may agree and, if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the Trustees present will constitute a quorum.
- (b) The Chief Executive will give written notice of a meeting which is adjourned pursuant to clause 8(a) of this Schedule 2 to all Trustees, which must be accompanied by the agenda for the adjourned meeting and any Trustee papers reasonably required to assist the Trustees to assess the matters due for consideration at the adjourned meeting.
- (c) Any meeting may be adjourned by the Chairperson upon the adoption of a resolution for its adjournment.

## **9 COMMITTEES**

The Trustees may from time to time appoint any one or more Trustees to be a committee for making any inquiry, for considering supervising or transacting any business of the Trust, for the investment and management of the Trust Funds or any part thereof, or for the performance of any duty or function which in the opinion of the Trustees will further the purposes and objects of the Trust. Subject to these rules and to any directions from time to time given by the Trustees every such committee may regulate its own procedure but so that a quorum at any meeting of the committee will be a majority of its members for the time being.

## **10 VOTING**

- (a) Except as otherwise provided in this Deed and subject to the quorum requirements as to meetings, the Trustees shall exercise their powers and discretions by a simple majority vote of the Trustees present.
- (b) The Chairperson or Deputy Chairperson acting as the chairperson of a meeting of Trustees shall have a second and casting vote in addition to his or her deliberative vote provided that such casting vote may only be exercised in the case of Trustee deadlock when voting on any particular issue.

## 11 DISCLOSURE OF INTERESTS

- (a) A Trustee will be interested in a transaction to which the Trust is a party if the Trustee:
- (i) is a party to, or will derive a material financial benefit from that transaction;
  - (ii) has a material financial interest in another party to the transaction;
  - (iii) is a director, officer or trustee of another party to, or person who will or may derive a material financial benefit from the transaction, not being a party that is wholly owned by the Trust;
  - (iv) is the parent, child or spouse of another party to, or person who will or may derive a material financial benefit from the transaction; or
  - (v) is otherwise directly or indirectly interested in the transaction.
- (b) As soon as a Trustee becomes aware of the fact that they are interested in a transaction or proposed transaction with the Trust, they must disclose to their co-Trustees:
- (i) if the monetary value of the Trustee's interest is able to be quantified, the nature and monetary value of that interest; or
  - (ii) if the monetary value of the Trustee's interest cannot be quantified, the nature and extent of that interest.
- (c) A disclosure of interest by a Trustee must be recorded in the minute book of the Trust. The Trustees shall record or cause to be recorded in the minute book of the Trust a disclosure of interests on behalf of all Trustees from time to time for such time as the Trustees of the Trust are the same persons as the trustees of the TECT Community Trust, and such disclosure shall be deemed to relate to, and be satisfactory for, all transactions or other dealings between the Trust and the TECT Community Trust or any entity controlled by the TECT Community Trust.
- (d) Although a Trustee who is interested in a transaction entered into or to be entered into by the Trust may not vote on a matter relating to the transaction, nor be included among the Trustees present at the meeting for the purpose of determining a quorum under clause 4 of this Schedule 2 the Trustee may:
- (i) attend a meeting of Trustees at which a matter relating to the transaction arises;
  - (ii) sign a document relating to the transaction on behalf of the Trust; and
  - (iii) do anything else as a Trustee in relation to the implementation of the transaction, as if he or she were not interested in the transaction.

## **12 MINUTES**

- (a) A minute book shall be provided and kept by the Trustees and all proceedings of the Trustees shall be entered in the minute book. The minute book may be kept in physical or electronic form.
- (b) Minutes signed by the chairperson of the meeting at which the proceedings were transacted or by the chairperson of the next succeeding meeting shall be evidence of the proceedings.
- (c) Where minutes of the proceedings at any meeting of Trustees have been made in accordance with the provisions of these rules then, until the contrary is proved, the meeting shall be deemed duly held and convened and all proceedings at that meeting to have been duly conducted.

## **13 RESOLUTIONS IN WRITING**

Notwithstanding any other provisions in the Deed or these rules, a resolution in writing signed by all the Trustees or (as the case may be) by all the members of a committee, shall be as effective for all purposes as a resolution passed at a meeting of the Trustees or of such committee (as the case may be) duly convened, held and constituted. Such resolution may consist of several documents in the same form, each signed by one or more of the Trustees or members of the committee, (as the case may be), including by affixing of an electronic signature to a document.

## **14 MEETINGS BY TELEPHONE / VIDEO CONFERENCING**

- (a) Notwithstanding any other provision in this Deed or these rules, the contemporaneous linking together of a number of the Trustees or members of a committee (the participants) being not less than a quorum, together with the person acting as a secretary, shall be deemed to constitute a meeting and all the provisions in these rules as to meetings shall apply to such meetings by telephone or by video conferencing.
- (b) Minutes of the proceedings at such meeting shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the chairperson of the meeting or by a person acting as a secretary.

## **15 VALIDITY OF PROCEEDINGS**

All acts done by any meeting of Trustees or of a committee of Trustees or by any person acting as a Trustee shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Trustee or person acting as aforesaid or that they or any of them were for any reason disqualified, be as valid as if such person had been duly appointed and was qualified to be a Trustee.

## **16 EXECUTION OF DOCUMENTS**

All documents required to be executed by the Trustees shall be deemed to be validly executed and binding on the Trust if these documents have been entered into and executed by the authority of the Trustees previously given and signed by at least two (2) Trustees or any other person approved by the Trustees for the purpose.



### **SCHEDULE 3**

#### **CONSUMER CONSULTATIVE PROCEDURE**

In respect of any provision of this Deed which requires the Trustees to implement a Consumer Consultative Procedure, the Trustees shall:

- (a) Place notice of the proposal before a meeting of the Trustees;
- (b) Give notice of the proposal to Consumers in accordance with clause 11 of the Deed;
- (c) In every notice given under paragraph (b) of this schedule, specify a period within which Consumers interested in the proposal may make submissions on the proposal to the Trustees;
- (d) Ensure that any Consumer who makes written submissions on the proposal within the period specified in the notice given under paragraph (b) of this Schedule 3 is given a reasonable opportunity to be heard by the Trustees;
- (e) Ensure that every meeting at which submissions are heard are open to Consumers; and
- (f) Make all written submissions on the proposal (excluding address details of the submitters if so determined by the Trustees) available to Consumers.

The period specified pursuant to paragraph (c) above shall be not less than one month and no more than three months.

**SCHEDULE 4**  
**MAP OF DISTRICT**

[Attached]

draft

## SCHEDULE 5

### REBATE POLICY

#### Part 1 - ELIGIBILITY CRITERIA

##### 1 General eligibility

To be eligible to receive a Rebate, Consumers must meet the following criteria:

(a) **Initial general eligibility**

- (i) To be eligible to receive a Rebate, a person must be a Consumer. A person is a Consumer if the person is named in the records of Trustpower as being liable to pay Trustpower any amount for electrical energy supplied to one or more ICPs situated in the District as at 9am on the Record Date.
- (ii) The number of eligible ICPs (which must, for the avoidance of doubt, be ICPs in the District) for each Consumer will be determined as at 9am on the Record Date and may only increase thereafter by up to five (5) ICPs (but will for the avoidance of doubt decrease if the criteria for eligibility set out in this Rebate Policy or this Deed are not met for any reason).

(b) **Ongoing general eligibility**

- (i) A person who is a Consumer as at 9am on the Record Date shall remain a Consumer (and therefore remain eligible to receive a Rebate in accordance with, and subject to, this Rebate Policy) for such time as the person retains an obligation to pay Trustpower or the Third Party, as the case may be, any amount for electrical energy supplied by Trustpower or that Third Party to the Consumer's ICP or ICPs, as the case may be, subject to the other conditions and criteria set out in Part 1 of this Rebate Policy.
- (ii) The Trustees may review a Consumer's eligibility to receive a Rebate in respect of one or more ICPs if the Trustees reasonably believe that the number of ICPs of that Consumer has been increased by means of an arrangement entered into by or on behalf of that Consumer for a purpose of increasing the aggregate Rebate payments receivable by that Consumer. If the Trustees in their discretion (acting reasonably) consider such an arrangement has been entered into they may make such adjustment to the entitlement of that Consumer to receive Rebates as they deem appropriate.

##### 2 Eligibility for payments of Rebate instalments

- (a) To be eligible to receive a Rebate instalment in July of each year, a Consumer must have had a power account described in paragraph 1 above for the preceding 1 October to 31 March period.

- (b) To be eligible to receive a Rebate instalment in December of each year, a Consumer must have had a power account described in paragraph 1 above for the preceding 1 April to 30 September period.
- (c) A Consumer who moves property within the District remains a Consumer and eligible for a Rebate provided that the Consumer reconnects their electrical energy supply at the person's new property with Trustpower or the Third Party (as the case may be) within the District less than 30 days after disconnecting their electrical supply at their previous property.

### **3 Account name changes**

If a Consumer changes the name on their Trustpower or Third Party (as the case may be) electrical energy supply account the Consumer shall from that date no longer be eligible for a Rebate and shall cease to be a Consumer.

### **4 Rebate eligibility queries**

Consumers have 12 months from the date of the previous distribution to query their entitlement to a Rebate.

### **5 Cessation of, and requalification for, eligibility**

Notwithstanding anything to the contrary in this Rebate Policy, a person who previously qualified as a Consumer, but who has ceased to be a Consumer for any reason, shall requalify as a Consumer if that person meets the eligibility criteria in this Rebate Policy within 18 months of the date upon which that person first ceased to be a Consumer. In such circumstances the person shall be entitled to receive future Rebate instalments commencing with the first Rebate instalment payable in July or December (as the case may be) after that person has been a Consumer again for the entirety of the six (6) month period to which such Rebate instalment relates, as described in paragraph 8 below.

### **6 Eligibility under exceptional circumstances**

Without prejudice to the generality of clause 5 of this Rebate Policy above, the Trustees shall consider paying a Rebate to a Consumer deemed ineligible by this Rebate Policy where such Consumer provides evidence of exceptional circumstances affecting the Consumer which resulted in the Consumer from otherwise remaining eligible to receive Rebates. Any such exemption shall be granted in the absolute discretion of the Trustees, and the Trustees' decision in such matters shall be final. When considering an exemption request, Trustees shall consider any precedent being created by this exemption. Evidence to be presented to Trustees must include the following information:

- A written explanation of the request for an exemption from the Consumer outlining the circumstances affecting the Consumer and explaining how those circumstances impacted on the Consumer's otherwise existing eligibility for Rebates.
- Details around the account changes affecting the Consumer including date and name changes if applicable, verified by Trustpower or the Third Party as the case may be.

- TECT management assessment of the circumstances affecting the Consumer and including comment on the extent of any precedent which may be established if the exemption is granted.

## 7 **Examples**

Examples of the application of the above principles are set out in the table annexed to this Schedule 5.

## **Part 2 - PROCEDURES**

### 8 **Payment method**

Consumers will be offered three payment options:

- (a) Rebate paid direct into nominated bank account;
- (b) Rebate credited to electrical energy account; and
- (c) Rebate donated to the Acorn Foundation Vital Impact Fund (or such other charitable fund maintained by the Acorn Foundation, or other charitable entity, as the Trustees may in each case determine in the event that such fund, or such foundation, no longer exists).

Other payment methods (e.g.: cheque or transfer to a third party) are not available.

### 9 **Payment Frequency**

Rebates shall be paid by semi-annual instalments as follows:

- (a) 50% of each Rebate shall be paid in July, being that portion of the Rebate applicable to the preceding 1 October to 31 March period; and
- (b) 50% of each Rebate shall be paid in December, being that portion of the Rebate applicable to the preceding 1 April to 30 September period,

with such adjustment as the Trustees determine necessary or appropriate with respect to the annual period to 31 December 2021.

### 10 **Tax Implications**

#### (a) ***Tax status of payment***

The intention of the Trustees is that Rebates shall, to the extent possible, be paid from the capital of the Trust or from tax paid income and therefore for most beneficiaries should not be subject to further income tax or need to be included in most Consumers' tax returns. Consumers however will need to satisfy themselves of the tax status of Rebates based on their own circumstances and changes in law from time to time.

(b) **Rates Rebates/Work & Income**

The intention of the Trustees is that Rebates shall will not need to be declared by Consumers as income when applying for a Council Rates Rebate or when applying for assistance through Work and Income, however Trustees can make no representations to Consumers in this regard and Consumers will need to satisfy themselves of their obligations points from time to time. The Trustees may from time to time publish their understanding of the law in this respect to assist Consumers.

**11 Early Release of Rebates**

Consumers may not receive a Rebate any earlier than the bulk processing date of that Rebate.

**12 Recouping costs associated with the Rebate distribution**

TECT may, from time to time charge Consumers for requests to provide information on prior Rebate payments, where there is considerable staff time and/or cost involved in doing so (as determined by the Trustees). TECT may charge up to the following levels:

- Information requested in respect of the previous two years shall incur no charge.
- Information requested in respect of the past five years shall incur a charge of \$100 per information request.
- Information requested in respect of the past 10 years shall incur a charge of \$150 per information request.
- Information requested in respect of any earlier period shall incur a charge of \$200 per information request.

**13 Rejected direct credits**

TECT will request the relevant registrar to advise Trustpower or the Third Party (as the case may be) and TECT of any rejected direct credits and to forward the dollar value of these to Trustpower or the Third Party (as the case may be) for crediting to the electrical energy account of the relevant Consumer.

**14 Missing Direct Credits**

Where a Consumer cannot see the credit appear in the Consumer's nominated bank account and that Consumer notifies TECT of this, TECT will request the relevant registrar to request a payment trace with the applicable bank.

Process: The Consumer will be advised of the outcome. Where the applicable bank advises the funds have been credited to an account not owned by the Consumer, TECT may request the relevant registrar to pay the Consumer the Consumer's Rebate amount as soon as practicable and seek reimbursement from the bank concerned.

**15 Missing credits to accounts**

Credits to electrical energy accounts may take two billing cycles to appear on such accounts.

**16 Rebates returned as a donation to TECT**

Any Rebates returned to TECT to be used for charitable purposes will be deposited into TECT's fund with the Acorn Foundation (or such other charitable entity established for similar purposes as the Trustees may determine in the event that the Acorn Foundation no longer exists).

draft

Annex to Schedule 5: Rebate Policy Eligibility Criteria Examples

**REBATE POLICY**

Description of entities and eligibility where account name changes.

**1. Businesses, Trusts, Companies and Trading Names**

TYPE	DESCRIPTION	EXAMPLES OF ACCOUNT NAME CHANGES
A. Sole Trader	<p>Business which is not a separate legal entity from owner. Individual is responsible for all taxes and debts. Business income taxed at individual tax rates. Personal assets (e.g. home) may be at risk if business debts can't be repaid.</p> <p>eg <i>WhizzyDo Administrative Services</i> is operated by <i>Pip Mills</i>.</p>	<p><b>EXAMPLES OF ACCOUNT NAME CHANGES</b></p> <p>i. <i>WhizzyDo Administrative Services</i> changes account to <i>Pip Mills</i> – <b>Eligible</b> as evidence exists that <b>Pip</b> was financially liable for both accounts</p> <p>ii. <i>WhizzyDo Administrative Services</i> changes account to <i>Pip Mills</i> &amp; <i>Paul Watson</i> – <b>Eligible</b> as <b>Pip's</b> name is on both accounts. <b>If subsequently Pip and Paul split, Paul cannot be eligible under an account opened in his own name, whereas Pip can as her name was on the original account at Record Date.</b></p>
B. Partnership	<p>Two or more people run a business together, share assets/liabilities. No formal register. Unlimited liability business agreement between partners rather than a business that is a separate legal entity.</p> <p>Partners are liable for debts incurred by other partners in connection with the business. Individual assets may be at risk.</p> <p>Partnership agreement typically outlines the partnership share (eg: 50/50). Partners include their share of profit/loss in individual tax return and satisfy own tax liability.</p>	<p>i. <i>Sunshine Partnership</i> changes account to <i>Kelly Wells &amp; Pete Hargrave</i>. Partnership agreement shows <i>Kelly Wells &amp; Pete Hargrave</i> as 50/50 partners of <i>Sunshine Partnership</i> – <b>Eligible</b></p> <p>ii. <i>Sunshine Partnership</i> changes account to <i>Kelly Wells</i>. Partnership agreement shows <i>Kelly Wells &amp; Pete Hargrave</i> as 50/50 partners of <i>Sunshine Partnership</i> – <b>Not Eligible</b></p> <p>ii. <i>Kelly Wells &amp; Pete Hargrave Partnership</i> changes account to <i>Kelly Wells &amp; Pete Hargrave</i>. Partnership agreement shows <i>Kelly Wells &amp; Pete Hargrave</i> as 50/50 partners of <i>Kelly Wells &amp; Pete Hargrave Partnership</i> – <b>Eligible</b></p>



<p>C. Company</p>	<p>Separate legal entity from individual shareholders. Registered with the Companies Office, shareholders hold the ownership interests in the company and have a financial interest in its business. Shareholders' liability is limited to the capital contributed (or if shares are not paid up, liable to be contributed) for their shares (i.e. for a limited liability company (Ltd)).</p> <p>Income tax ordinarily paid by the company and post tax profits distributed to shareholders, shareholders may have additional tax liability (paid by withholding at company level) if their personal tax rate is higher than the company tax rate.</p>	<p>i. <i>Sunshine Sheds Ltd</i> changes account name to <i>James Darwin</i> - <b>Not Eligible</b> as these are separate legal entities</p> <p>ii. <i>Suzie Goldsmith Hair Design Ltd</i> changes account name to <i>Suzie Goldsmith</i> - <b>Not Eligible</b> as these are separate legal entities</p> <p>iii. <i>Sunshine Sheds Ltd</i> changes company name to <i>Sunshine Sheds &amp; Awnings Ltd</i> but remains same company (same company number) - <b>Eligible</b></p> <p>v. <i>Sunshine Sheds &amp; Awnings Ltd</i> changes name to <i>Sunshine Sheds Ltd</i> (existing Consumer) but is a separate company (different Company number) <b>Not Eligible</b></p>
<p>D. Trading Trust Family Trust</p>	<p>Business trading as a trust. Trustees have the power to carry on the business of the trust and hold investments.</p> <p>Current income distributed to beneficiaries is taxed at beneficiaries' marginal tax rates; income not distributed is taxed at trustee tax rate. Tax losses can be carried forward by trustees but cannot be passed on to beneficiaries.</p>	<p>i. <i>The Craig Family Trust</i> changes account name to <i>Bill Craig</i> - <b>Not Eligible</b></p> <p>ii. <i>The Craig Family Trust</i> changes account name to <i>Felicity &amp; John Craig</i> - <b>Not Eligible</b> as these are separate legal entities</p> <p>iii. <i>Felicity &amp; John Craig</i> changes account to <i>The Craig Family Trust</i> - <b>Not Eligible</b> as these are separate legal entities.</p> <p>v. <i>John Craig</i> resigns as Trustee on <i>The Craig Family Trust</i>. <i>Bill Craig</i> becomes a Trustee. <i>The Craig Family Trust</i> is still eligible.</p>
<p>E. Other/Trading Name</p>	<p>Non-entities - Orchards / lifestyle blocks etc where owners make up an identifying name for their property.</p>	<p>i. <i>Willow Creek</i> is the name on the account for the water bore/pump which services 3 properties on Willow Creek Lane. The water bore/pump is on Susan Dally's property and she owns the power account. The other two property owners pay Susan 1/3 of each month's power bill. Susan moves house and closes the water bore/pump power account. Peter Smythe moves into Susan's property and opens a new account for the water bore/pump under the name <i>Willow Creek</i>. <b>Not</b></p>

		<p><b>Eligible. The other two neighbours are also not eligible</b> as they were not named on the account.</p> <p>ii. <i>Willow Creek</i> changes account to <i>Susan Daily</i> – <b>Eligible</b> if evidence exists that <b>Susan was financially liable for both accounts.</b></p>
--	--	---

**2. Individual, Couple & Flattening Accounts**

TYPE	DESCRIPTION	EXAMPLES OF ACCOUNT NAME CHANGES
<p>A. Individuals. (Individual people, couples and flatmates are named on a power account for a property)</p>	<ul style="list-style-type: none"> <li>Joint Account to individual accounts</li> </ul>	<p>i. <i>Scott Smith &amp; Carina Jones</i> changes account name to <i>Scott &amp; Carina Smith</i> after getting married – <b>Eligible</b></p> <p>ii. <i>Mr Scott &amp; Mrs Carina Smith</i> changes account to <i>Carina Jones</i> (Maiden Name) – <b>Eligible</b> as Carina's name was on original accounts. (need to provide marriage cert to show married/maiden names)</p> <p>iii. <i>Karen &amp; John Brown</i> closes joint account and either <i>Karen Brown</i> or <i>John Brown</i> opens a new account in their individual name – <b>Eligible</b> as their names were both on the original joint account at Record Date</p> <p>iv.</p>
	<ul style="list-style-type: none"> <li>Individual Account to Joint Account</li> </ul>	<p>i. <i>Bruce Arnott</i> changes account to <i>Bruce Arnott &amp; Sharon Kingi</i> – <b>Eligible</b> as Bruce's name is on both accounts so he provides continuance. If subsequently <i>Bruce &amp; Sharon</i> split, <i>Sharon</i> cannot be eligible under another account opened in her name as her name wasn't on the account at Record Date.</p>

	<ul style="list-style-type: none"> <li>Flat Accounts</li> </ul>	<ul style="list-style-type: none"> <li>i. Sam Lee, Jason Brown &amp; Sally Field changes account to Sam Lee, Sally Field &amp; Carl Harrison- <b>Eligible</b> as Sam and Sally's names were both on the original account.</li> <li>ii. After above change - if Jason Brown opens a new account in his name - <b>Eligible</b> as his name was on the account that was eligible at Record Date.</li> <li>iii. If Carl Harrison subsequently takes his name off the account with Sam Lee and Sally Field, and opens his own account he cannot be eligible for that new account as his name wasn't on the original account at Record Date.</li> <li>v. If Jason Brown opens a new account in the name of Mr Jason Brown &amp; Miss Grace Collier - <b>Eligible</b>. If subsequently Jason &amp; Grace split, Grace cannot be eligible under another account opened in her name as her name wasn't on the original account at Record Date.</li> </ul>
<ul style="list-style-type: none"> <li>Change of name on account</li> </ul>		<ul style="list-style-type: none"> <li>i. Mr Frank Smythe changes account name to Mrs Jane Smythe after Franks death- <b>Eligible</b> (if death cert shows Jane Smythe as surviving spouse). If Jane Smythe is daughter or daughter in law - <b>Not Eligible</b> as eligibility cannot be passed to child or child-in-law, as child has no financial obligation for parents' debt.</li> <li>ii. Mr Frank Smythe changes account name to Mrs Jane Smythe - <b>Not Eligible</b> as Mrs Jane Smythe was not name on original account.</li> <li>iii. James Tasker changes name on account to Kelly Tasker (Daughter) - <b>Not Eligible</b> as child has no financial obligation for parent's debt.</li> <li>v. Karen &amp; John Leach (joint account). John &amp; Karen split, and John moves out but joint account remains active, John moves into another property and opens a new account in just his name - <b>Not Eligible</b> as original account under which John is eligible remains an active account. Original account remains <b>Eligible</b></li> </ul>

<p>B. Change in number of ICP's</p>	<ul style="list-style-type: none"> <li>Additional ICP's can be made eligible after Record Date (up to a maximum of five (5) per eligible Consumer)</li> </ul>	<p>i. <i>Richard &amp; Donna Friend</i> have an account at 410 No1. Road, Te Puke which has two ICP's and receive a Rebate for each ICP. They move to 31 Boucher Ave, Te Puke which has only one ICP. In future they will only receive 1 Rebate but are still eligible for a Rebates on an additional five (5) ICPs (their original two (2) ICPs and a maximum of five (5) additional ICP's).</p> <p>ii. <i>Richard &amp; Donna Friend</i> have an account at 31 Boucher Ave, Te Puke which has only one ICP for which they receive a Rebate. They move to 410 No1. Road, Te Puke which has two ICP's – one for the dwelling and one for the shed. They will receive two (2) Rebates. .</p> <p>iii. <i>Richard &amp; Donna Friend</i> have an account at 410 No1. Road, Te Puke which has two ICP's and receive a Rebate for each ICP. They move to 671 Te Matai Road, Te Puke which has two ICP's. They continue to receive two (2) Rebates.</p> <p>v. <i>Richard &amp; Donna Friend</i> have an account at 410 No1. Road, Te Puke which has one ICP. They move to 671 Te Matai Road, Te Puke which has ten ICP's. They will receive six (6) Rebates only (one plus an additional five (5)).</p> <p>v. <i>Richard &amp; Donna Friend</i> have an account at 410 No1. Road, Te Puke which has one ICP and receive a Rebate for that ICP. They acquire a bach in Tay Street which they add to their existing account. In future they will receive two (2) Rebates but are still eligible for a Rebate on an additional four (4) ICPs (i.e. up to six (6) ICPs).</p>
<p>C. Closure of account</p>	<ul style="list-style-type: none"> <li>Closes own account, but pays for another</li> </ul>	<p>i. <i>Camilla Gregory</i> closes her account when she moves out of her flat and house sits for <i>Shane &amp; Stephanie Scott</i> while they are away, agreeing to pay their power account for that period. <i>Camilla Gregory</i> - <b>Not Eligible</b> unless she reopens an account in her name.</p> <p>ii. <i>Shane &amp; Stephanie Scott</i> - <b>Eligible</b> as their names remain on their account regardless of who is paying for it (they remain financially liable).</p>



## TAB 14



[TECT logo]

At the heart of  
our community



**TECT**

Style Definition



# Trust Deed

Conformed copy of Trust Deed — including all amendments as at 19  
October 2016







## TABLE OF CONTENTS

	Page No.
<u>1. DEFINITIONS AND CONSTRUCTION</u>	<u>3</u>
<u>2. NAME OF THE TRUST</u>	<u>3</u>
<u>3. DECLARATION OF TRUST</u>	<u>7</u>
<u>4. PURPOSE OF THE TRUST</u>	<u>7</u>
<u>5. TRUSTS OF INCOME UNTIL DISTRIBUTION DATE</u>	<u>7</u>
<u>6. TRUSTS OF CAPITAL</u>	<u>9</u>
<u>7. APPOINTMENT, RETIREMENT AND PROCEEDINGS OF TRUSTEES</u>	<u>10</u>
<u>8. GENERAL POWERS</u>	<u>10</u>
<u>9. TRUSTEES' POWERS</u>	<u>10</u>
<u>10. DUTIES OF TRUSTEES</u>	<u>12</u>
<u>11. INFORMATION TO CONSUMERS</u>	<u>17</u>
<u>12. REMUNERATION AND EXPENSES OF TRUSTEES</u>	<u>17</u>
<u>13. VARIATION TO TRUST DEED</u>	<u>18</u>
<u>14. WINDING UP OF TRUST</u>	<u>18</u>
<u>15. LIABILITY</u>	<u>19</u>
<u>16. INDEMNITY</u>	<u>19</u>
<u>17. NOTICES</u>	<u>19</u>

SCHEDULE I  
SCHEDULE II  
SCHEDULE III



# Trust Deed

~~TAURANGA ENERGY CONSUMER~~

## TECT Consumer Trust

*Draft Consumer Trust Deed being the existing TECT Trust Deed (as at 19 October 2016) and including proposed edits*

draft

## **CONTENTS**

<b><u>1</u></b>	<b><u>DEFINITIONS AND CONSTRUCTION</u></b>	<b><u>3</u></b>
<b><u>2</u></b>	<b><u>NAME OF THE TRUST</u></b>	<b><u>8</u></b>
<b><u>3</u></b>	<b><u>DECLARATION OF TRUST</u></b>	<b><u>9</u></b>
<b><u>4</u></b>	<b><u>PURPOSE OF THE TRUST AND PRINCIPAL MEANING OF CONSUMERS</u></b>	<b><u>9</u></b>
<b><u>5</u></b>	<b><u>TRUSTS OF INCOME AND CAPITAL UNTIL TERMINATION DATE</u></b>	<b><u>10</u></b>
<b><u>6</u></b>	<b><u>TRUSTS OF CAPITAL AND INCOME ON THE TERMINATION DATE</u></b>	<b><u>13</u></b>
<b><u>7</u></b>	<b><u>APPOINTMENT, RETIREMENT AND PROCEEDINGS OF TRUSTEES</u></b>	<b><u>14</u></b>
<b><u>8</u></b>	<b><u>TRUSTEES' POWERS</u></b>	<b><u>14</u></b>
<b><u>9</u></b>	<b><u>DUTIES OF TRUSTEES</u></b>	<b><u>15</u></b>
<b><u>10</u></b>	<b><u>INFORMATION TO CONSUMERS</u></b>	<b><u>21</u></b>
<b><u>11</u></b>	<b><u>REMUNERATION OF TRUSTEES</u></b>	<b><u>22</u></b>
<b><u>12</u></b>	<b><u>VARIATION TO TRUST DEED</u></b>	<b><u>23</u></b>
<b><u>13</u></b>	<b><u>WINDING UP OF TRUST</u></b>	<b><u>24</u></b>
<b><u>14</u></b>	<b><u>LIABILITY AND INDEMNITY</u></b>	<b><u>25</u></b>
<b><u>15</u></b>	<b><u>NOTICES</u></b>	<b><u>26</u></b>
	<b><u>SCHEDULE 1 TRUSTEES' DUTIES</u></b>	<b><u>38</u></b>
	<b><u>SCHEDULE 2 APPOINTMENT, RETIREMENT AND PROCEEDINGS OF THE TRUSTEES</u></b>	<b><u>41</u></b>
	<b><u>SCHEDULE 3 CONSUMER CONSULTATIVE PROCEDURE</u></b>	<b><u>56</u></b>
	<b><u>SCHEDULE 4 MAP OF DISTRICT</u></b>	<b><u>60</u></b>
	<b><u>SCHEDULE 5 REBATE POLICY</u></b>	<b><u>61</u></b>



TRUST

Formatted: Font: Verdana, Not Bold

DEED OF TRUST

Formatted: AgreementTitleSubHeader2, Left, Line spacing: single, Hyphenate, Tab stops: Not at 7.32 cm

Formatted: Font: Verdana

Formatted: Font: Verdana

draft

DEED, originally dated \_\_\_\_\_, 21st day of December \_\_\_\_\_, 1993

Formatted: Font: Verdana, Not Bold

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

~~BETWEEN TRUSTPOWER LIMITED a duly incorporated company with its registered office at Tauranga (hereinafter called "the Company")~~

~~AND SHIRLEY MARGARET CROWLEY~~

~~IAN FREDERICK FOOTE~~

~~BARRY WALTER BRAME JENSEN~~

~~NOEL MAYNARD JOHNSON~~

~~NORMAN FREDERICK MAYO~~

~~EDWARD Mc GREGOR MURRAY~~

~~NOEL FRANK POPE~~

~~LYN ARTHUR WAHREN~~

~~RUFUS GEORGE WALLINGFORD~~

~~(hereinafter together with their successors in office called "as varied on the Trustees") Effective Date referred to below~~

Formatted: Indent: Left: 0 cm, First line: 0 cm, Line spacing: single, Hyphenate, Tab stops: Not at 0 cm + 1.69 cm + 2.75 cm + 3.81 cm + 4.87 cm + 5.93 cm

Formatted: Font: Verdana

Formatted: Font: Verdana

WHEREAS

**A. BACKGROUND**

~~The Tauranga Electric Power Board (the "Board") has formed the Company as a registered public company limited TECT Consumer Trust was originally settled in 1993, by share in which the sole subscriber is the Board.~~

Formatted: Font: Verdana

Formatted: Font: Verdana

~~9 Pursuant to the Act the Minister of Energy has approved the establishment plan prepared and submitted in respect of the Company which establishment plan provides for the allocation of shares in the Company, the legal predecessor to the Trustees.~~

Formatted: Font: Verdana

~~A C The Company wishes to establish the Tauranga Energy Consumer Trust current Trustpower Limited (company number 565426), to enable the Trustees to acquire the shares in the Company to be shares in that predecessor entity (originally also called Trustpower Limited, but with company number 604040). The shares in that predecessor entity were vested in the Trustees in accordance with the establishment plan approved by the Minister of Energy at the time, under the Energy Companies Act 1992.~~

Formatted: List Paragraph, Outline numbered + Level: 1 + Numbering Style: A, B, C, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

~~D The Trustees will have an ongoing obligation to carry out reviews of their continuing ownership of the securities involving consultation in accordance with the terms of this Deed.~~

~~B 6 Pursuant to a scheme of arrangement in 2016, the original Trustpower Limited (company number 604040) underwent a demerger transaction and its assets and liabilities (other than certain wind and solar assets which were devolved to new company Tilt Renewables Limited) were transferred to the entity now known as Trustpower Limited (company number 565426).~~

~~C As a consequence of continuing changes in the energy industry affecting the Trust, the Trustees, after undertaking a Consumer Consultative Procedure and obtaining the approval of the High Court, by unanimous resolution amended this Deed and undertook a restructuring of the Trust pursuant to which:~~

~~C.1 a portion of the Trust Fund prior to such restructure was resettled in to a new community trust (the TECT Community Trust referred to below) to be held for community purposes within the District or which benefit persons resident in the District and which are charitable at law; and~~

~~C.2 the balance of the Trust Fund is to be applied by the Trustees in accordance with the terms of the Trust Deed varied as of and from the date referred to above.~~

~~D Pursuant to the Trust Deed as so varied, the Trustees will:~~

~~D.1 apply the Trust Fund (subject to retention of such reserves as the Trustees derive through their ownership determine) by way of loan to the assets TECT Community Trust;~~

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

~~D.2 utilise the net annual income of the Trust Fund will be made available directly or indirectly and the capital of the Trust Fund (as the Trustees in their discretion decide/determine) for the purposes of paying annual Rebates to Consumers; and~~

Formatted: List Paragraph, Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

~~D.3 upon the future termination or winding up of the Trust, apply the assets remaining in the Trust Fund for the benefit of the TECT Community Trust or entities within its control as further set out herein.~~

## 1.1 DEFINITIONS AND CONSTRUCTION

1.1 In this deed, unless the context otherwise requires:

~~"Act" means the Energy Companies Act 1992;~~

~~"Annual General Meeting" means a meeting of Trustees specified as the annual general meeting of Trustees in the notice calling the meeting;~~

~~"Balance Date" means 31 March or any other date adopted from time to time by the Company, Trust as the end of its Financial Year;~~

~~"Board Chief Executive" means the chief executive of the Tauranga Electric Power Board constituted Trust (or similar most senior officer of the Trust, by the Electric Power Boards Act 1925;~~

~~"Chairperson" means the Trustee elected as chairperson pursuant to rule 4 of schedule 1;~~

~~"Code of Conduct" means a code of conduct to regulate the behaviour and conduct of participants in relation to a Trustee election and which is adopted, amended and issued (whatever name) appointed from time to time by Trustees to the Independent Returning Officer;~~

~~"Code of Practice" means the operating guidelines to promote best practice in energy trust administration adopted or to be adopted by the Trustees in respect of the Trust (as amended or replaced from time to time) or, if at any time there is no such person appointed, the Chairperson of the Trust at the relevant time;~~

~~"Company" means Scarlett Limited (formerly called Trustpower Limited) (company number 604040) and includes any successor company or any company arising out of any reconstruction, amalgamation or merger of the Company, including (without limitation) Trustpower Limited (company number 565426) but excluding Tilt Renewables Limited (company number 2212113) and any subsidiary companies of Tilt Renewables Limited;~~

Formatted: Font: Verdana

Formatted: Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm

Formatted: Font: Verdana

Formatted: List Paragraph, Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana

Formatted: Indent: Left: 1.1 cm

Formatted: Font: Verdana, Not Bold, Italic

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Indent: Left: 1.1 cm

Formatted: Font: Verdana, Not Bold, Italic

Formatted: Font: Verdana, Not Bold

Formatted: Font: Verdana, Not Bold, Italic

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Indent: Left: 1.1 cm

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

**"Confidential Information"** means information which is by express classification or by its nature reasonably intended to be confidential to the Trust and which has not been released into the public domain by reason of;

(i) ~~(i) The proper discharge in good faith~~ by a Trustee of duties and obligations created by the Trust, ~~as set out in this Deed;~~

(ii) ~~(ii) The proper discharge in good faith~~ by a Trustee with the express authority or express consent of the Trust of duties and obligations created by the Trust;

(iii) ~~(iii) The~~ order or direction of any lawful or regulatory authority, or otherwise as a consequence of the operation of any law or regulation;

(iv) ~~A~~ request for disclosure pursuant to the Guidelines.

**"Consumer" means:**

(i) a person who is named in the records of the Company as being liable to pay the Company any amount for electrical energy supplied or to be supplied to premises situate in the District;

(iv) ~~(ii)~~ the TECT Charitable Trust as constituted pursuant to a deed of trust dated 27 March 2002; or

(iii) any other entity wholly owned and/or controlled by TECT and whose beneficiaries and objectives are substantially the same as TECT's;

(v) other lawful action by a third party;

Consumer has the meaning given to it in clause 4.2;

**Consumer Consultative Procedure** means the procedure for consultation set out in ~~schedule 4~~ Schedule 3;

**"Deed"** means this deed ~~Deed~~ and includes the schedules and any amendments;

**"Deputy Chairperson"** means the Trustee elected as deputy chairperson pursuant to rule 4 of schedule 1;

**"Directors"** means the directors from time to time of the Company;

Formatted: Font: Verdana, Not Bold, Italic, Not Expanded by / Condensed by

Formatted: Font: Verdana, Not Bold, Not Expanded by / Condensed by

Formatted: Font: Verdana, Not Bold, Italic, Not Expanded by / Condensed by

Formatted: Font: Verdana, Not Expanded by / Condensed by

Formatted: Indent: Left: 1.1 cm, First line: 0 cm, Right: 0 cm

Formatted: Font: Verdana

Formatted: Font: Verdana, Not Expanded by / Condensed by

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana, Not Expanded by / Condensed by

Formatted: Font: Verdana, Not Expanded by / Condensed by

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: List Paragraph, Indent: Left: 1.1 cm, Line spacing: single, Outline numbered + Level: 4 + Numbering Style: I, II, III, ... + Start at: 1 + Alignment: Left + Aligned at: 2.2 cm + Tab after: 3.3 cm + Indent at: 3.3 cm, Hyphenate, Tab stops: 2.2 cm, List tab + Not at: 0 cm + 1.69 cm + 2.75 cm + 3.3 cm + 3.81 cm + 4.87 cm + 5.93 cm

Formatted: Font: Verdana

Formatted: Font: Verdana, Not Bold, Italic

Formatted: Indent: Left: 1.1 cm

Formatted: Font: Verdana, Not Bold

Formatted: Font: Verdana, Not Bold, Italic

Formatted: Font: Verdana, Not Bold

Formatted: Font: Verdana, Not Bold, Italic

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Indent: Left: 1.1 cm

Formatted: Font: Verdana, Not Bold, Italic

Formatted: Font: Verdana

Formatted: Font: Verdana



"District" means:

- (i) the territory over which the ~~Board~~ Tauranga Electric Power Board constituted by the Electric Power Boards Act 1925 was authorised to supply electricity ~~immediately prior to the Vesting Date pursuant to the Tauranga Electric Power Board Supply Licence pursuant to a licence granted to the Board under section 20 of the Electricity Act 1968; and immediately prior to the vesting of that Board's undertaking in the predecessor to Trustpower, and the vesting of the shares therein in the Trustees;~~
- (ii) the territory over which Tauranga Electricity Limited was authorised to supply electricity immediately prior to its merger with the ~~Company~~ legal predecessor to Trustpower in 1997 and includes, for the avoidance of doubt, that area comprising the Tauranga City peninsula north of the centreline of 17th Avenue, Tauranga.

Formatted: Font: Verdana, Not Bold, Italic  
Formatted: Font: Verdana  
Formatted: Normal, Indent: Left: 1.1 cm, Keep with next  
Formatted: Normal, Indent: Left: 1.1 cm, Hanging: 1.1 cm, Tab stops: Not at 2.75 cm + 11 cm + 14 cm  
Formatted: Font: Verdana  
Formatted: Font: Verdana  
Formatted: Font: Verdana  
Formatted: Font: Verdana

Formatted: Font: Verdana  
Formatted: Font: Verdana, Not Superscript/ Subscript  
Formatted: Font: Verdana  
Formatted: Font: Verdana

"Dividends" means, in relation to the Company, any distributions paid in cash by the Company to the Trustees as holders under this Deed of Shares or Other Securities;

"Environment" shall have the meaning ascribed to that term in the Resource Management Act 1991;

"as shown in the map attached as Schedule 4 to this Deed;

Effective Date means the date of the unanimous Trustee resolution referred to in Background C of this Deed;

Financial Statements means the financial statements of the Trust prepared in accordance with clause ~~40.29.3~~ 3(a);

Financial Year means any year or other accounting period ending on a Balance Date;

Guidelines means those "Guidelines for Access to Trust Information by Consumers" (or any similar document) adopted, amended or ~~superseded~~ superseded from time to time by a resolution of Trustees relating to the rights of Consumers to, and procedures relating to the disclosure of, Trust information ~~as referred to in the Code of Practice;~~

Independent Returning Officer means that person appointed to the office of Independent Returning Officer pursuant to clause 10.5 for the purposes of conducting and supervising any Trustee election held pursuant to clause 3.4 of Schedule 1;

Formatted: Font: Verdana, Not Bold, Italic  
Formatted: Indent: Left: 1.1 cm, Line spacing: single, Hyphenate, Tab stops: Not at 0 cm + 1.69 cm + 2.75 cm + 3.81 cm + 4.87 cm + 5.93 cm  
Formatted: Font: Verdana, Not Bold  
Formatted: Font: Verdana, Not Bold, Italic  
Formatted: Font: Verdana  
Formatted: Font: Verdana  
Formatted: Indent: Left: 1.1 cm, Line spacing: single, Hyphenate, Tab stops: Not at 0 cm + 1.69 cm + 2.75 cm + 3.81 cm + 4.87 cm + 5.93 cm  
Formatted: Font: Verdana, Not Bold, Italic  
Formatted: Font: Verdana, Not Bold  
Formatted: Font: Verdana, Not Bold, Italic  
Formatted: Font: Verdana  
Formatted: Indent: Left: 1.1 cm, Line spacing: single, Hyphenate, Tab stops: Not at 0 cm + 1.69 cm + 2.75 cm + 3.81 cm + 4.87 cm + 5.93 cm  
Formatted: Font: Verdana, Not Bold, Italic  
Formatted: Font: Verdana, Not Bold  
Formatted: Font: Verdana  
Formatted: Font: Verdana  
Formatted: Font: Verdana  
Formatted: Font: Verdana  
Formatted: Font: Verdana

"Local Authority" means a local authority within the meaning of the Local Government Act 1974;

"Other Securities" means securities (other than the Shares), instruments (including convertible notes and voting debentures) or options convertible to shares or other securities in the Company;

"persons" includes any individual, corporation, partnership, joint venture, association, trust, organisation, government department or local authorities;

"Retirement Date" means the date the Secretary declares the names of the candidates elected under rules 3.4(c) or 3.4(h) of schedule 4;

"Secretary/ICP" means, in respect of a Consumer, an installation control point (or equivalent) maintained by that Consumer for the delivery of electrical energy;

Rebates means the annual rebates payable to Consumers in accordance with, and as more extensively described in, clause 5;

Rebate Policy means the policy set out in Schedule 5 of this Deed;

Record Date means 28 January 2021;

Residuary Beneficiary means the person appointed as secretary pursuant to rule 19 of schedule 4;

Formatted: Font: Verdana

"Securities" means Shares or other securities, instruments (including convertible notes and voting debentures) or options convertible to Shares or other securities in the Company;

"Shares" means shares in the capital of the Company held by the TECT Community Trust as part of the constituted pursuant to the TECT Community Trust Fund Deed;

Formatted: Indent: Left: 1.1 cm  
Formatted: Font: Verdana  
Formatted: Font: Verdana  
Formatted: Font: Verdana

"Special Resolution" means a resolution of the Trustees passed by a majority of not less than seventy five per cent (75%) of the total number of Trustees in office at the time the Special Resolution is passed;

Formatted: Indent: Left: 1.1 cm  
Formatted: Font: Verdana, Not Bold, Italic  
Formatted: Font: Verdana, Not Bold  
Formatted: Font: Verdana, Not Bold, Italic  
Formatted: Font: Verdana

"TECT Community Trust" means the trust established pursuant to the TECT Community Trust Deed;

TECT Community Trust Deed means the deed of trust of the TECT Community Trust dated [e] 2021;

TECT Community Trust Trustees means the trustees for the time being of the TECT Community Trust, and TECT Community Trust Trustee means any one of them;

Termination Date means the earlier of 1 January 2072 and the date upon which the Trustees resolve that the Trust ceases or is otherwise wound up in accordance with applicable law and clause 14 provided however that if the perpetuity period restrictions cease to apply to 13 of this Trust or are amended to permit the Trust to continue beyond 1 January 2072, this definition shall be amended so that the Termination Date shall be the date beyond which the Trust may not continue Deed;

Third Party has the meaning given to that term in clause 4.2(a) (including as further interpreted in clause 4.3);

the Trust means the trust established by this Deed;

the Trustees means the trustees for the time being of the Trust and Trustee means any one of them;

Trust Fund means all the funds of the Trust and includes all capital and income for the time being held by the Trustees of the Trust;

Trustee Act means the Trustee Act 1956;

Vesting Date means the date upon which the Governor-General by Order in Council under section 47 of the Act vests the undertaking of the Board in the Company and the Shares in the Trustees;

Trustpower means Trustpower Limited (company number 565426) and includes a company or other entity:

- (i) into which Trustpower is amalgamated, or combined pursuant to a scheme of arrangement, in each case in accordance with the provisions of the Companies Act 1993; or
- (ii) which acquires Trustpower pursuant to a takeover transaction, whether pursuant to the Takeovers Code or otherwise.

after the Effective Date; and Trusts Act means the Trusts Act 2019.

Formatted: Font: Verdana, Not Bold, Italic
Formatted: Font: Verdana, Not Bold, Italic
Formatted: Indent: Left: 1.1 cm, Keep with next
Formatted: Font: Verdana, Not Bold
Formatted: Font: Verdana
Formatted: Font: Verdana
Formatted: Font: Verdana
Formatted: Font: Verdana
Formatted: Font: Verdana
Formatted: Font: Verdana
Formatted: Font: Verdana, Not Bold
Formatted: Indent: Left: 1.1 cm
Formatted: Font: Verdana, Not Bold, Italic
Formatted: Font: Verdana
Formatted: Indent: Left: 1.1 cm
Formatted: Font: Verdana, Not Bold
Formatted: Font: Verdana, Not Bold, Italic
Formatted: Font: Verdana
Formatted: Font: Verdana
Formatted: Indent: Left: 1.1 cm
Formatted: Font: Verdana, Not Bold, Italic
Formatted: Font: Verdana, Not Bold
Formatted: Font: Verdana, Not Bold, Italic
Formatted: Font: Verdana

1.2 In this Deed, unless the context otherwise requires:

(a) references to one gender include each other gender;

(b) references to the singular include the plural and vice versa;

(c) the headings and the index shall not affect the construction of this Deed;

(d) references to clauses are references to clauses of this Deed and references to schedules are references to schedules to this Deed;

(e) references to a party, person or entity (other than a company) includes an individual, partnership, firm, company, body corporate, corporation, association, trust, estate, state, government or any agency thereof, municipal or local authority and any other entity, whether incorporated or not (in each case whether or not having a separate legal personality);

(e)(f) references to a statute include references to regulations, orders or notices made under or pursuant to such statute. References to any statute, regulations, order or other statutory instrument or by-law shall be deemed to be references to the statute, regulation, order, instrument or by-law as from time to time amended and includes substituted provisions that substantially correspond to those referred to;

(g) references to working days are to days other than weekends and public holidays; and

(f)(h) words, terms or expressions which are defined in the Energy Companies Act 1992 but are not defined in this Deed shall have the meaning attributed to them in that Act.

~~1.3 For the purposes of the Perpetuities Act 1964 the perpetuity period applicable to this Deed shall be the period from the date of execution hereof until the first anniversary of the Termination Date.~~

2.2 NAME OF THE TRUST

Formatted: Font: Verdana  
Formatted: List Paragraph, Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Keep with next, Tab stops: Not at 1.25 cm + 11 cm + 14 cm

Formatted: Font: Verdana  
Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana  
Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana  
Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana  
Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana  
Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana  
Formatted: Font: Verdana  
Formatted: Font: Verdana

Formatted: Font: Verdana  
Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana  
Formatted: Font: Verdana  
Formatted: Font: Verdana

Formatted: Font: Verdana  
Formatted: Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Tab stops: Not at 11 cm + 14 cm

The Trust shall be known as the ~~Tourange Energy TECT~~ Consumer Trust or such other name as the Trustees may determine from time to time.

- Formatted: Font: Verdana
- Formatted: Font: Verdana
- Formatted: Indent: Left: 1.1 cm

### 3.3 DECLARATION OF TRUST

The ~~Company hereby declares and directs that the~~ Trustees shall ~~acknowledge and declare that they stand possessed of the Trust Fund, including the sum of \$100 originally settled by on the Company contemporaneously with Trustees on the execution 21st day of this Deed and December 1993, together with~~ all other moneys or property of whatever kind hereafter paid, given, or transferred to, vested in, or purchased or acquired by (or agreed to be transferred to or purchased or acquired by) the Trustees to be held upon the trust hereby declared and any accumulations of income therefrom and all moneys, investments and property of whatever kind from time to time representing the same to be held upon the Trust and for the purposes and with the powers, authorities and discretions set out in this Deed.

- Formatted: Font: Verdana
- Formatted: Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Tab stops: Not at 11 cm + 14 cm
- Formatted: Font: Verdana
- Formatted: Font: Verdana
- Formatted: Indent: Left: 1.1 cm
- Formatted: Font: Verdana
- Formatted: Font: Verdana
- Formatted: Font: Verdana
- Formatted: Font: Verdana
- Formatted: Font: Verdana
- Formatted: Font: Verdana
- Formatted: Font: Verdana

### 4.4 PURPOSE OF THE TRUST AND PRINCIPAL MEANING OF CONSUMERS

- Formatted: Font: Verdana
- Formatted: Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Tab stops: Not at 11 cm + 14 cm

4.1 The purposes and objects for which the Trust is established are:

- Formatted: Font: Verdana
- Formatted: Font: Verdana
- Formatted: List Paragraph, Line spacing: single, Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Keep with next, Hyphenate, Tab stops: Not at 0 cm + 1.69 cm + 2.75 cm + 3.81 cm + 4.87 cm + 5.93 cm

4.1 ~~On Vesting Date, to receive Shares vested in the Trustees by order in council made in accordance with section 47 of the Act.~~

4.2 ~~If the Trustees so elect to subscribe for, purchase or otherwise acquire Other Securities in the capital of the Company.~~

4.3 ~~To retain and hold the Shares and Other Securities until such time as the Shares or Other Securities, as the case may be, are sold, transferred or disposed of.~~

- Formatted: Font: Verdana
- Formatted: Font: Verdana

4.4 ~~In the event of any sale, transfer or other disposition of Shares or Other Securities to hold the proceeds of any such sale, transfer or other disposition upon the trust for capital in accordance with clause 6.1.~~

- Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Tab stops: Not at 11 cm + 14 cm

4.5(a) ~~To receive Dividends and to~~ distribute, pay, apply or appropriate the ~~Dividends and other~~ income and the capital of the Trust Fund which the Trustees do not resolve to accumulate to or for the benefit of the ~~to~~ Consumers in the manner provided in accordance with clause 5 of this Deed; and

- Formatted: Font: Verdana
- Formatted: Font: Verdana
- Formatted: Font: Verdana
- Formatted: Font: Verdana
- Formatted: Font: Verdana
- Formatted: Font: Verdana

(b) Following the Termination Date to pay, apply and appropriate the capital and any retained income of the Trust for the benefit of the Residuary Beneficiary in the manner provided in clause 6.

Formatted: Font: Verdana  
Formatted: Font: Verdana  
Formatted: Font: Verdana

4.2 For the purposes of this Deed a Consumer means each person who is named in the records of Trustpower as being liable to pay Trustpower any amount for electrical energy supplied or to be supplied to one or more ICPs situated in the District as at 9am on the Record Date provided that such person:

Formatted: Font: Verdana

(a) retains an obligation to pay Trustpower or a third party purchaser of all or a substantial part of Trustpower's business of supplying electrical energy to one or more ICPs in the District (a Third Party), as the case may be, any amount for electrical energy supplied by Trustpower or that Third Party to the Consumer's ICP or ICPs, as the case may be in accordance with the Eligibility Criteria set out in Part 1 of the Rebate Policy; and

(b) otherwise at all times satisfies the Eligibility Criteria set out in Part 1 of the Rebate Policy.

Formatted: Font: Verdana

4.64.3 For the purposes of clause 4.2 and each other usage of the term in this Deed, a Third Party shall include a company or other entity;

Formatted: List Paragraph, Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Keep with next, Tab stops: Not at 11 cm + 14 cm

(a) into which the Third Party has amalgamated or been combined pursuant to a scheme of arrangement, in each case in accordance with the provisions of the Companies Act 1993; and

Formatted: Font: Verdana  
Formatted: Font: Verdana  
Formatted: Font: Verdana

(b) to which the Third Party has sold all or a substantial part of the business so acquired from Trustpower that relates to the supply of electricity in the District.

5.5 TRUSTS OF INCOME AND CAPITAL UNTIL DISTRIBUTION/TERMINATION DATE

Formatted: Font: Verdana  
Formatted: Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Don't keep with next, Don't keep lines together, Tab stops: Not at 11 cm + 14 cm

The Trustees shall until the Termination Date stand possessed of the Income arising from the Trust Fund and the capital of the Trust Fund upon the following trusts and with and subject to the following powers:

Formatted: Font: Verdana  
Formatted: Font: Verdana  
Formatted: Font: Verdana  
Formatted: Indent: Left: 1.1 cm, Don't keep with next, Don't keep lines together

5.1 The Trustees shall from the net annual Income derived by the Trust Fund (or if required from the capital of the Trust Fund) first pay all the fees, costs and disbursements of and incidental to administering the Trust, including remuneration and allowances payable to Trustees as hereinafter provided and (without limitation) costs incurred by the Trustees in pursuance of their duties and may in addition set aside reserves of income to provide for any payments or liabilities which the Trustees have power to pay pursuant to this clause 5 or otherwise under this Deed.

Formatted: Font: Verdana  
Formatted: Font: Verdana  
Formatted: List Paragraph, Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Tab stops: Not at 11 cm + 14 cm  
Formatted: Font: Verdana  
Formatted: Font: Verdana  
Formatted: Font: Verdana  
Formatted: Font: Verdana  
Formatted: Font: Verdana

~~5.1 The Trustees shall have power in their absolute discretion to accumulate so much of the income of the Trust Fund as they think fit by investing the same so that all such accumulations shall be added to and form part of the capital of the Trust Fund and be held by the Trustees upon the same trusts and with the powers herein declared in respect of such capital but provided that the Trustees may at any time or times resort to such accumulations and pay, apply or appropriate the whole or any part thereof as if the same were income of the Trust Fund arising in the financial year in which the same are resorted to.~~

~~5.2 The Trustees shall distribute the balance of the current net annual income by paying, applying or appropriating the same in such manner and in such proportions as the Trustees in their absolute and unfettered discretion shall think proper for the benefit of the Consumers and where such distributions comprise Dividends the Trustees may have regard to any report of Directors given pursuant to clause 5.4 AND IT IS DECLARED that distributions of income for the benefit of Consumers may be made in any one or more of the following ways and no such distribution shall be called into question by any Consumer:~~

~~(a) By payment in cash to any one or more of the Consumers to the exclusion of other Consumers in such manner and in such shares and proportions as the Trustees in their absolute and unfettered discretion shall think proper;~~

~~(b) By the provision of goods or services or an entitlement to goods and services to any Consumer or Consumers and generally in such form and at such value as the Trustees shall determine including the giving of an entitlement by voucher or some other form of entitlement (which may be transferable or not transferable as the Trustees decide) to goods and services which the Trustees may have purchased or provided for out of the income of the Trust Fund;~~

~~(c) By carrying out or causing to be carried out works which in the opinion of the Trustees will benefit Consumers such as:~~

~~(i) Improvements to the safety of Consumers by removing road and overhead hazards caused by above ground electricity supply support systems in the District;~~

~~(ii) Avoiding, remedying or mitigating any adverse effects of energy related activities on the Environment;~~

~~(iii) Promoting research into more efficient ways of producing and distributing electrical energy for the benefit of Consumers in the District including the awarding of research scholarships or prizes and the funding of research and development projects;~~

~~(iv) Subsidising the installation of the means of supply of energy to Consumers which would otherwise be uneconomic;~~

~~(d) By carrying out or causing to be carried out or funding in whole or in part (whether by way of Consumer distribution, loan, investment, the underwriting of project liabilities, the giving of financial support or otherwise) the carrying out of projects or other community initiatives which in the opinion of the Trustees will benefit Consumers.~~

~~5.2 The Trustees shall out of the net annual income derived by the Trust Fund or from the capital of the Trust Fund pay an amount (the Rebate) to or for the benefit of each~~

Consumer in an aggregate amount per annum described in clause 5.3 per ICP of that Consumer.

5.3 The amount of the Rebate payable to each Consumer (for the avoidance of doubt, to the extent to which the net annual income and capital of the Trust Fund is sufficient for such purposes) per ICP of that Consumer shall be:

(a) in the annual period to 31 December 2021 and in each annual period thereafter to 31 December 2030, \$500 (provided that in the annual period to 31 December 2021 the Trustees shall make such adjustment to any payment of Rebates payable after the Effective Date as is appropriate taking into account any other rebates paid to Consumers in that annual period prior to the Effective Date, so as to result in an aggregate payment to Consumers for that annual period of, or as closer as possible to, \$500);

(b) in each annual period thereafter to 31 December 2040, \$600; and

(c) in each annual period thereafter to 31 December 2050, \$700.

5.4 The timing and manner of such payment shall otherwise be in accordance with the Procedures set out in Part 2 of the Rebate Policy.

~~5.1~~ Each

~~5.4~~ The Trustees may request the Directors to produce a report in respect of each Dividend received by the Trustees which report recommends an appropriate allocation of the Dividend amongst the classes of Consumer based on the contribution made by each class of Consumer to the earning of that Dividend and in such report the Directors may classify Consumers in any manner they see fit.

5.5 Any of the Consumers to whom or in respect of which income or capital is paid, applied or appropriated by the Trustees pursuant to clause 5.3, shall, subject to clause 5.6, as from the date of such payment, application or appropriation, take an absolute and indefeasibly vested interest in such income or capital.

5.6 The foregoing provisions as to vesting of income shall not operate to vest any part of the corpus of the Trust Fund in any of the Consumers.

5.7 Each Trustee who is also a Consumer shall notwithstanding the provisions of this Deed or any applicable rule of law or equity, be entitled to receive any benefit as a Consumer which may be distributed to Consumers in accordance with clause 5.3.

~~5.85.6~~ All payments made to Consumers or entitlements of Consumers to goods and services unclaimed for one year after having been sent (or attempted to be so sent) or notified to any Consumer (paid) may be invested or otherwise made use of by or being an entitlement to goods and services disposed of by the Trustees for the benefit of the Trust Fund until claimed and the Trustees shall be entitled to mingle the amounts of any unclaimed payments or money from entitlements with other moneys forming part of the Trust Fund and to credit any income arising in any Financial Year from the investment of such unclaimed

Formatted: List Paragraph, Line spacing: single, Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Keep with next, Hyphenate, Tab stops: Not at 0 cm + 1.69 cm + 2.75 cm + 3.81 cm + 4.87 cm + 5.93 cm

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: List Paragraph, Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: List Paragraph, Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana



payments to the Trust Fund. Any amounts unclaimed on the earlier of the Termination Date or one year after that amount was ~~sent paid~~ (or attempted to be so ~~sent paid~~) or ~~notified~~ notification thereof was provided to any Consumer (including by notification delivered to the last known address of that Consumer), in each case by or on behalf of the Trustees, shall thereupon be deemed to form part of the Trust Fund.

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

## 6. TRUSTS OF CAPITAL

~~6.1 The Shares and Other Securities or the proceeds of sale or other disposition of the Shares and Other Securities and investments representing the same (the corpus of the Trust Fund) shall be held by the Trustees upon trust to pay, apply or allocate the same, on or before the Termination Date for the benefit of the Consumers in such manner and in such shares as the Trustees in their absolute and unfettered discretion consider fair and equitable. PROVIDED THAT the Trustees may at any time or times prior to the Termination Date pay, apply or allocate the corpus of the Trust Fund or any part or parts thereof as the Trustees think fit for the benefit of the Consumers in any of the ways set out in clause 5.2 of this Deed as if the provisions of clause 5.2 and clause 9.2 with any necessary changes were reproduced in this clause 6.1.~~

~~6.2 From and after the Termination Date the Trustees shall stand possessed of the corpus of the Trust Fund and the income thereof and any income previously derived by the Trustees that has not been paid, applied or appropriated in accordance with clause 5.1 of this Deed, upon trust to pay, apply or appropriate the same to or for or otherwise howsoever for the benefit of the Consumers in such manner and in such shares (including if permitted by law, by establishing a further trust for the benefit of Consumers to be on the same terms mutatis mutandis as this Trust) as the Trustees shall in their absolute and unfettered discretion consider fair and equitable provided however that if the Trustees have not so paid, applied or appropriated any or all of such Trust Fund and income on the day before the first anniversary of the Termination Date the amount so remaining shall be paid in equal shares to each Consumer as at the first anniversary of the Termination Date.~~

5.7 Each Trustee who is also a Consumer shall, notwithstanding the provisions of this Deed or any applicable rule of law or equity, be entitled to receive any benefits as a Consumer which may be distributed to Consumers in accordance with clause 5.2.

5.8 Subject to clause 5.2, the Trustees shall have power in their absolute discretion to accumulate so much of the net annual income of the Trust Fund as they think fit (where such net annual income is not otherwise required for the payment of Rebates to Consumers) by investing the same so that all such accumulations shall be added to and form part of the capital of the Trust Fund and be held by the Trustees upon the same trusts and with the powers herein declared in respect of such capital.

## 6 TRUSTS OF CAPITAL AND INCOME ON THE TERMINATION DATE

From and after the Termination Date, the Trustees shall stand possessed of the remaining capital and income of the Trust Fund, upon trust to pay, apply or distribute to the Residuary Beneficiary to be held and applied on and subject to the trusts of the TECT Community Trust Deed.

**7.7 APPOINTMENT, RETIREMENT AND PROCEEDINGS OF TRUSTEES**

~~The rules set forth in schedule 1 hereto (with such amendments, deletions and additions thereto as may lawfully be made) shall upon the execution out in Schedule 2 of this Deed shall govern the appointment, retirement and proceedings of the Trustees and associated matters.~~

- Formatted: Font: Verdana
- Formatted: Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Don't keep with next, Don't keep lines together, Tab stops: Not at: 11 cm + 14 cm
- Formatted: Font: Verdana
- Formatted: Indent: Left: 1.1 cm, Don't keep with next, Don't keep lines together
- Formatted: Font: Verdana
- Formatted: Font: Verdana
- Formatted: Font: Verdana
- Formatted: Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Don't keep with next, Don't keep lines together, Tab stops: Not at: 11 cm + 14 cm
- Formatted: Font: Verdana

**8.8 GENERAL TRUSTEES' POWERS**

~~8.1 The Trustees may exercise the powers, authorities and discretions conferred by this Deed in addition to and not by way of limitation of the powers, authorities and discretions conferred upon the Trustees generally by the Trustee Act (except where otherwise specified in this Deed). For the avoidance of doubt, no Trustee shall have the power, authority or discretion to participate in the management or operation of the Company (other than in the capacity as a Director appointed to the board of the Company and where the Trustee was nominated for that office pursuant to a Special Resolution of the Trustees) and in exercising the powers conferred by this clause and clause 9 the Trustees shall be restricted to exercising their rights as a shareholder subject always to the provisions of this Deed.~~

8.1 The Trustees have the following general powers:

- (a) all the powers necessary to manage the Trust property including, in relation to the Trust property, all the powers of an absolute owner of the property; and
- (b) all the powers necessary to carry out the Trust, including powers incidental to those in clause 8.1(a).

8.2 Without prejudice to the generality of clause 8.1 or to any of the Trustees' express or implied powers under this Deed and at law, the Trustees have the power to advance by way of loan all of the Trust Fund to the TECT Community Trust Trustees (subject to retention of such reserves as the Trustees determine). Such loan may be on a fixed rate of interest and otherwise on such terms as the Trustees in their discretion may determine, provided that the making of such loan does not preclude the Trustees from making the payment of Rebates contemplated by clause 5.

8.3 The Trustees may exercise their powers from time to time in such manner and on such terms and subject to such conditions as they may in their absolute and uncontrolled discretion determine, provided they do so having regard to their duties in law and under this Deed. Without prejudice to the generality of the foregoing, the Trustees shall ensure that in all dealings they have with the TECT Community Trust, they act in their capacities as Trustees appointed pursuant this Deed in accordance with their duties described in clause 9 and as further specified in Schedule 1.

8.28.4 In the exercise of any power, authority or discretion under this Deed the Trustees shall have no obligation to deal with persons other than those who qualify as ~~are~~ Consumers as defined in this Deed and in particular shall not be required to recognise any trust or other arrangement affecting any Consumer nor shall the Trustees be liable in any

- Formatted: Font: Verdana
- Formatted: List Paragraph, Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Tab stops: Not at: 11 cm + 14 cm
- Formatted: Font: Verdana

respect for any inaccuracies in the records of ~~the Company Trustpower (or any other person)~~, which affect the status of any person as being or not being a Consumer.

Formatted: Font: Verdana  
Formatted: Font: Verdana

## 9. TRUSTEES' POWERS

### 9. SUBJECT DUTIES OF TRUSTEES

#### 9.1

~~9.1 The Trustees, in the express terms of this Deed (and without limiting the generality of the foregoing) the Trustees shall have in relation to the Trust Fund and the income arising from the Trust Fund all the same powers as a natural person acting as beneficial owner of the property from time to time comprising the Trust Fund and such powers shall not be restricted by any principle of construction or rule of law except to the extent that such is obligatory.~~

Formatted: Font: Verdana  
Formatted: Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Tab stops: Not at 11 cm + 14 cm  
Formatted: List Paragraph, Line spacing: single, Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Keep with next, Hyphenate, Tab stops: Not at 0 cm + 1.69 cm + 2.75 cm + 3.81 cm + 4.87 cm + 5.93 cm

~~(a) Without limiting the generality of the preceding paragraph and merely by way of example have the duties set out in Schedule 1 and will perform those duties having regard to the context of the Trust and the terms of this Deed.~~

~~9.2 In addition the Trustees shall have the powers specific duties set out in schedule II to this Deed which may be exercised either alone or jointly with any other person.~~

Formatted: Font: Verdana  
Formatted: Font: Verdana  
Formatted: Font: Verdana

~~9.3(b) Notwithstanding clause 9.1, the Trustees shall not dispose (whether legally or beneficially) of any interest in the Shares or any other asset of the Trust Fund (and where more than one asset of the Trust Fund is disposed of in one or more transactions which substantially represent a single disposition of assets those assets shall be regarded as a single asset) unless:~~

Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Tab stops: Not at 11 cm + 14 cm  
Formatted: Font: Verdana  
Formatted: Font: Verdana

~~(a) the disposal has been approved by a Special Resolution of the Trustees;~~

~~(b) Where the disposition is of Securities and the number of Securities proposed to be disposed of:~~

~~(A) is equal to or greater than five (5) percent of the Base Level for Securities; or~~

~~(B) when aggregated with any previous dispositions of Securities which have not been the subject of a Consumer Consultative Procedure, would be equal to or greater than five (5) percent of the Base Level for Securities;~~

~~the Trustees have first implemented a Consumer Consultative Procedure in respect of the proposed disposal. Provided That the following Securities may be disposed of without restriction and the provisions of this clause 9.3(b) shall not apply to such dispositions:~~

~~(i) any Excess Securities;~~

~~(ii) any Securities so long as contemporaneously therewith~~

~~(i) Securities are acquired which have voting rights which are at least equal in number to the voting rights attaching to the Securities being disposed of; or~~

~~(iii) The Trust enters into an agreement or agreements to acquire Securities having voting rights which are at least equal in number to the voting rights attaching to the Securities being disposed of.~~

~~(c) Where the disposition is of an asset other than Securities which exceeds (or when aggregated with the value of assets other than Securities previously disposed of which were not subject to a Consumer Consultative Procedure exceeds) in value five (5) percent of the value of the Trust Fund, the Trustees have first implemented a Consumer Consultative Procedure in respect of the proposed disposal. Provided that the provisions of this clause 9.3(c) shall not apply where, following the disposition, the Trust would still hold a Base Level for Securities or Securities and/or other assets which have voting rights which are at least equal in number to the voting rights attaching to a Base Level for Securities.~~

~~(d) For the purposes of clauses 9.3(b) and (c), the expressions:~~

~~"Base Level for Securities" at any time means 27,466,000 Securities;~~

~~"Excess Securities" at any time means securities in the Company held by the Trust in excess of the Base Level for Securities; and~~

~~"dispose", "disposed" and "disposition" shall not include the giving of a mortgage (legal or equitable), charge or other encumbrance.~~

~~9.4 Notwithstanding the provisions of section 13C of the Trustee Act 1956 and the likelihood that the Trustees will from time to time include persons whose profession, employment or business is or includes acting as a trustee or investing money on behalf of others, the care, diligence and skill to be exercised by the Trustees in exercising any power of investment shall not be that required of such persons by section 13C of the Trustee Act 1956 but, subject always to clause 9.5, shall at all times be the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others.~~

~~9.5 Notwithstanding anything else in this Deed, no Trustee shall be liable for any breach of trust in respect of any duty to exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others or that a prudent person engaged in a profession, employment or business that is or includes acting as a trustee or investing money on behalf of others would exercise in managing the affairs of others merely (in either case) because the investments of the Trust Fund (including, but without limitation, the Securities) are not diversified.~~

#### ~~10.1 DUTY OF TRUSTEES~~

~~10.1.2 The Trustees shall ensure that full and correct accounts of all the financial transactions of the Trust and its assets and liabilities and funds are kept.~~

Formatted: Font: Verdana

Formatted: Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana

Formatted: List Paragraph, Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Tab stops: Not at: 11 cm + 14 cm

~~10.29.3~~ The Trustees shall within four months after the end of each Financial Year:

~~(a)~~ prepare Financial Statements in accordance with generally accepted accounting practice (within the meaning of section ~~38~~ of the Financial Reporting Act ~~1992/013~~, applied as if the Trust was a reporting entity) with respect to the affairs of the Trust for that Financial Year;

~~(b)~~ submit those Financial Statements to an auditor for audit; and

~~(c)~~ ~~make available to the public (which includes all Consumers) in accordance with clause 10.4~~ **make those audited Financial Statements and the auditor's report on those Financial Statements.**

~~10.3~~ In addition ~~available to~~ clause ~~10.2(a)~~, the Financial Statements of the Trust shall ~~also~~ **separately:**

~~(a)~~ ~~the total amount of any distribution of income or capital paid to all Consumers by way of general distribution (if applicable) in that Financial Year~~

~~(b)~~ ~~the names of persons to whom distributions of income or capital have been approved or paid in that Financial Year other than those referred to in clause 10.2(a) together~~ **accordance with the individual amounts approved or paid by way of a payment scheme, clause 9.9 and**

~~(c)~~ ~~a statement confirming that the Trustees have complied with all of their obligations under the Code of Practice.~~

~~10.4~~ ~~(e)~~ The Trustees shall make the documents referred to in clause ~~10.1(c)~~ available to the public (which includes all Consumers) by making copies of them available:

~~(i)~~ ~~for inspection at every office of the Trust or at any other place specified in the notification under clause 10.4(b) (during ordinary office hours) free of charge; and~~

~~(ii)~~ ~~for purchase at a reasonable price.~~

~~(b)(c)~~ The Trustees shall notify the fact that copies of such documents are so available by ~~advertisement in the news section of two separate editions of each newspaper that is widely read by Consumers~~ **announcement on a website maintained by the Trust.**

~~9.4~~

~~10.6~~ ~~(e)~~ ~~The Trustees shall in each Financial Year, hold a~~ **General Meeting of Consumers at which the Consumers**

~~(i)~~ ~~(in respect of a general meeting of Consumers held in a year where no election of Trustees is required to be held) appoint an Independent Returning Officer to hold office from the conclusion of that meeting until the next general meeting of Consumers to be held in a non-election year;~~

~~(ii)(a)~~ ~~at which the Consumers~~ appoint an auditor to hold office from the conclusion of that meeting until the conclusion of the next ~~annual General Meeting~~ **general meeting of Consumers** ~~and~~

Formatted: Font: Verdana

Formatted: List Paragraph, Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Keep with next, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana

Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana

Formatted: List Paragraph, Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Keep with next

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

~~(iii) — if applicable, fix the amount of remuneration payable to Trustees pursuant to clause 12.1(b)(i).~~

~~(b) (i) — The Trustees may fill any casual vacancy in the office of Independent Returning Officer by appointing an Independent Returning Officer to hold office until the conclusion of the next general meeting of Consumers to be held in a year where no election of Trustees is required to be held (but, while the vacancy remains, the surviving or continuing Independent Returning Officer, if any, may continue to act as Independent Returning Officer).~~

~~If no Independent Returning Officer is appointed in accordance with clause 10.5(a), or a casual vacancy in the office of Independent Returning Officer is not filled within one month of the vacancy occurring in accordance with this clause, the Secretary shall be the Independent Returning Officer who shall hold office until the conclusion of the next general meeting of Consumers to be held in a year where no election of Trustees is required to be held.~~

~~(b) The Trustees may fill any casual vacancy in the office of auditor by appointing an auditor to hold office until the conclusion of the next annual/general meeting of Consumers (but, while the vacancy remains, the surviving or continuing auditor, if any, may continue to act as auditor).~~

- Formatted: Font: Verdana
- Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Tab stops: Not at 11 cm + 14 cm
- Formatted: Font: Verdana
- Formatted: Font: Verdana

~~(c) (i) — The fees and expenses of the Independent Returning Officer must be fixed:~~

~~(A) — at the general meeting of Consumers or in the way the Consumers determine at the meeting, if appointed at the general meeting; or~~

~~(B) — by the Trustees, if appointed by the Trustees.~~

~~(c) The fees and expenses of the auditor must be fixed:~~

~~(i) at the annual/general meeting of Consumers or in the way the Consumers determine at the meeting, if appointed at the annual/general meeting; or~~

~~(ii) by the Trustees, if appointed by the Trustees.~~

- Formatted: Font: Verdana
- Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Keep with next, Tab stops: Not at 11 cm + 14 cm
- Formatted: Font: Verdana
- Formatted: List Paragraph, Outline numbered + Level: 4 + Numbering Style: i, ii, iii, ... + Start at: 1 + Alignment: Left + Aligned at: 2.2 cm + Tab after: 3.3 cm + Indent at: 3.3 cm, Tab stops: Not at 11 cm + 14 cm
- Formatted: Font: Verdana
- Formatted: Font: Verdana
- Formatted: Font: Verdana
- Formatted: List Paragraph, Outline numbered + Level: 4 + Numbering Style: i, ii, iii, ... + Start at: 1 + Alignment: Left + Aligned at: 2.2 cm + Tab after: 3.3 cm + Indent at: 3.3 cm, Tab stops: Not at 11 cm + 14 cm
- Formatted: Font: Verdana

~~(d) (i) — The Independent Returning Officer must be a person who, in the opinion of Trustees, is suitably qualified to act as an independent returning officer and who has no material conflict of interest with the Trust or its affairs. For the avoidance of doubt, the Independent Returning Officer cannot be a Trustee, a person who would be deemed to be "interested" pursuant to clause 14 of Schedule 1 if that person was in fact a Trustee, a candidate nominated for election pursuant to clause 3.4 of Schedule 1, a Director, employee or agent of the Trust or of the Company, or a Consumer.~~

~~(d) The auditor of the Trust:~~

- Formatted: Font: Verdana
- Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Keep with next, Tab stops: Not at 11 cm + 14 cm

~~(A)(i)~~ must be a person who is qualified to act as an auditor under section 199(1) of the Companies Act 1993 and, in selecting an auditor, the Consumers may seek the advice of the Auditor-General; and

Formatted: Font: Verdana

Formatted: List Paragraph, Outline numbered + Level: 4 + Numbering Style: i, ii, iii, ... + Start at: 1 + Alignment: Left + Aligned at: 2.2 cm + Tab after: 3.3 cm + Indent at: 3.3 cm, Tab stops: Not at: 1.1 cm + 14 cm

~~(B)(ii)~~ must not be a Trustee, Director, employee or agent of the Trust or of the Company or otherwise disqualified from being an auditor under section 199(2)(b) and (d) of the Companies Act 1993.

Formatted: Font: Verdana

Formatted: List Paragraph, Outline numbered + Level: 4 + Numbering Style: i, ii, iii, ... + Start at: 1 + Alignment: Left + Aligned at: 2.2 cm + Tab after: 3.3 cm + Indent at: 3.3 cm, Tab stops: Not at: 1.1 cm + 14 cm

~~(c) (i) The Independent Returning Officer shall be entrusted with the whole conduct of a Trustee election held pursuant to this Trust Deed. The Independent Returning Officer shall have power to and shall:~~

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

~~(A) appoint such scrutineers and other assistants and delegate to them such powers and duties as it shall see fit;~~

~~(B) provide for the due secrecy, fair conduct and professional nature of any Trustee election process which is to be undertaken in accordance with the relevant provisions of Schedule 1 (as amended from time to time) and the Code of Conduct;~~

~~(C) generally do all things necessary, expedient or advisable in its opinion for the proper conduct of any Trustee election;~~

~~(D) where circumstances arise which create doubt or uncertainty in any Trustee election process, seek, at the Trust's cost, independent advice in the form of a legal opinion on such matters and upon which it may rely in order to resolve or clarify such uncertainties;~~

~~(E) monitor statements which are brought to the attention of the Independent Returning Officer or which are made publicly by incumbent Trustees and/or candidates in relation to any Trustee election to ensure that such statements are factually correct and not misleading. The Independent Returning Officer shall be entitled to require that person making offending statements to retract or correct such statements and may, if thought appropriate in the circumstances, publicly correct any misstatements or inaccuracies of fact on that persons behalf if they fail to do so in an appropriate manner and within an appropriate period of time and may disqualify a candidate from a Trustee election or take such other action that he/she may think fit in his/her sole discretion in order to meet the purpose and objectives of this Deed and the Code of Conduct in relation to a Trustee election; and~~

~~(F) be entitled to be indemnified against the Trust Fund and be reimbursed for any reasonable expenses incurred by it in the exercise of its duties and powers under this Trust Deed.~~

~~(iii)(e)~~ In addition, sections 198, 200 and 202 to 207 of the Companies Act 1993 apply in relation to the auditor. These sections of the Companies Act 1993 apply as if references to a company were to the Trust, references to a director were to a Trustee, references to a board were to the Trustees, references to shareholders were to Consumers, ~~references to a subsidiary were to an electricity company owned by the Trust and that company's subsidiaries,~~ and all other necessary modifications were made. ~~In this clause, "electricity company" has the meaning set out in section 3(1) of the Electricity Industry Reform Act 1998.~~

Formatted: Font: Verdana

Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Tab stops: Not at: 1.1 cm + 14 cm

Formatted: Font: Verdana

Formatted: Font: Verdana

9.5

~~10.6(a)~~ (a) The Trustees must give no less than ~~14~~ten (10) working days' notice of the ~~annual~~general meeting of Consumers ~~in on a website maintained by the news section of two separate editions of each newspaper that is widely read by Consumers Trust.~~

~~(a)(b)~~ Every Consumer shall have one vote.

~~(b)(c)~~ The quorum for ~~the annual~~that general meeting is 20 Consumers.

~~(e)(d)~~ No business may be transacted at the ~~annual~~general meeting of the Consumers if a quorum is not present.

~~(f)(e)~~ ~~Regulations if issued under section 172C of the Electricity Act 1992 shall govern proceedings~~Proceedings at such annual meetings~~the general meeting~~ of Consumers but if no such Regulations have been issued, then such proceedings shall be determined by the Trustees~~Chairperson of the Trust.~~

9.6 (a)

~~10.7(a)~~ If no auditor is appointed in accordance with clause ~~109.5(a)~~ or a casual vacancy in the office of auditor is not filled within one month of the vacancy occurring in accordance with clause ~~109.5(b)~~, the Auditor-General shall be the auditor of the Trust.

~~(a)(b)~~ The Trustees shall, within five (5) working days of clause ~~109.7(a)~~ becoming applicable, give written notice to the Auditor-General of this fact.

~~(b)(c)~~ If this clause ~~10.79.6~~ applies, the sections and parts of the Public Audit Act 2001 listed in section 19 of that Act shall apply to the Trust until an auditor is appointed at an ~~annual~~general meeting of Consumers, as if references in those sections to a public entity were references to the Trust and with any other necessary modifications.

~~10.89.7~~ The Trustees shall, from time to time, make a copy of this Deed available to Consumers in accordance with clause ~~1110.~~

~~10.99.8~~ The Trustees shall ~~comply with the provisions of the Code of Practice in effect from time to time.~~

~~10.10~~ The Trustees shall:

Formatted: List Paragraph, Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Keep with next

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Tab stops: Not at 1.25 cm + 11 cm + 14 cm

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana

Formatted

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted

Formatted: Font: Verdana



(a) keep confidential all Confidential Information (and its existence) which has been provided to or become available to either the Trust or Trustee(s);

(b) not disclose or otherwise publish Confidential Information, nor make any copies of, or record any extracts from, Confidential Information and must use their best reasonable endeavours to ensure that to the extent possible by law no other person does so; and

(c) not use Confidential Information other than for the purpose of the proper discharge in good faith of duties and obligations created by the Trust, with the exception of Confidential Information provided in confidence to a professional advisor of the Trust or to a Trustee for the purposes of the obtaining of advice as to the discharge in good faith of duties and obligations created by the Trust and with the further expectation of compliance with any order or determination made by any Court or lawful authority.

The Trustees acknowledge that a breach of Trusteeship dealing with matters of confidentiality and Confidential Information may amount to a breach of trust of such a serious nature as to justify an expectation of resignation by the defaulting Trustee, failing which action by the Trust for removal from office may be proper.

#### 11.10 INFORMATION TO CONSUMERS

~~Subject to clause 10.4, for~~For the purpose of complying with any requirement under this Deed to make any document or information available to Consumers, it shall be sufficient for the Trustees to make such document or information available ~~for inspection at any office of the Trust or any office of the Company or at any other place in the District during normal business hours on any business day.~~

11.2 ~~The Trustees shall give not less than three days' notice in a principal newspaper or newspapers circulating in the District of the place at which and the times when such documents or information may be inspected by Consumers.~~

- (a) ~~for inspection at every office of the Trust (during ordinary office hours);~~
  - (b) ~~at any other place or in any other manner specified by the Trustees and notified to Consumers; or~~
  - (c) ~~on a website maintained by the Trust.~~
- ~~in each case free of charge.~~

Formatted: Font: Verdana, Not Expanded by / Condensed by

Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana, Not Expanded by / Condensed by

Formatted: Font: Verdana, Not Expanded by / Condensed by

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana, Not Expanded by / Condensed by

Formatted: Font: Verdana

Formatted: Font: Verdana, Not Expanded by / Condensed by

Formatted: Font: Verdana

Formatted: Font: Verdana, Not Expanded by / Condensed by

Formatted: Font: Verdana

Formatted: Normal, Indent: Left: 1.1 cm, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana

Formatted: Font: Verdana, Not Expanded by / Condensed by

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Don't keep with next, Don't keep lines together, Tab stops: Not at 11 cm + 14 cm

Formatted: Normal, Indent: Left: 1.1 cm, Don't keep with next, Don't keep lines together, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana

Formatted: Font: Verdana

## 12.11 REMUNERATION AND EXPENSES OF TRUSTEES

~~(a) — Any No Trustee hereof who shall be employed entitled in connection with the trusts hereof may be paid all such any Financial Year to remuneration for their services as may be normal as if they had been employed in that behalf and had not been a Trustee hereof.~~

~~(a) — (i) — The Trustees (other than a Trustee remunerated pursuant to clause 12.1(a)) to the extent that such remuneration covers services to which this clause 12.1(b) applies shall be entitled in each Financial Year to such remuneration for their services as may be reasonable having regard to their duties and responsibilities as Trustees.~~

~~(i) — No remuneration shall be paid to a Trustee pursuant to clause 12.1(b)(i) unless that remuneration has been authorised by a resolution of Consumers passed at a General Meeting of Consumers held pursuant to clause 10.5(a) provided that the total remuneration (including meeting allowances) payable to Trustees for the financial year ending 31 March 2004 shall be deemed to have been duly authorised by Consumers for the purposes of this clause. Each such resolution shall express Trustees' remuneration as either:~~

~~(A) — a monetary sum per annum payable to all Trustees taken together; or~~

~~(B) — a monetary sum per annum, plus meeting allowances, payable to any person who from time to time holds office as a Trustee or as the Chairperson or as the Deputy Chairperson.~~

~~In the event of an increase in the total number of Trustees holding office, the Trustees may, without the authorisation of a resolution of Consumers, increase the total remuneration by such amount as is necessary to enable the additional Trustee or Trustees to receive remuneration, including provision for meeting allowances, not exceeding the average amount then being paid to each of the other Trustees (excluding the Chairperson).~~

~~(ii) — No resolution which increases the amount fixed pursuant to a previous Consumer resolution shall be passed at a General Meeting of Consumers unless notice of the amount of increase has been given in the notice of meeting.~~

~~(iii) — Trustees' remuneration paid pursuant to clause 12.1(a) may be approved by the Trustees without the need for Consumer approval.~~

12.2 — The Trustees shall be entitled to be indemnified against, and reimbursed for, any expenses incurred by them in the exercise of their powers and duties under this Deed.

Formatted: Font: Verdana

Formatted: Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana

Formatted: Normal, Indent: Left: 1.1 cm, First line: 0 cm, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

~~12.3 The payments of remuneration and expenses to the Trustees pursuant to rule 12.1(a), 12.1(b) or rule 12.2 shall be paid out of the Trust Fund or any other fund available for that purpose.~~

### 13.12 VARIATION TO TRUST DEED

~~13.12.1 The Trustees shall have the power by Special Resolution (of which notice to propose that Special Resolution shall have been given in the notice convening the meeting) to alter or amend the terms of this Deed other than ~~clause 12.2 and the provisions set out in clause 13.2 which shall only be capable of being altered or amended in the manner set out in clause 12.2;~~~~

- ~~(a) clause 12.2 and the provisions set out in clause 12.2 which shall only be capable of being altered or amended in the manner set out in clause 12.2; and~~
- ~~(b) the definition of "Residuary Beneficiary", clauses 5.3, 5.4, 6, 7, this clause 12.1(b) and clause 13, which may not be altered or amended by the Trustees.~~

~~12.2 The Trustees shall have power ~~on a unanimous resolution of all the Trustees after to alter or amend:~~~~

- ~~(a) the definitions of "Consumers", "District", "Rebate" and "Rebate Policy";~~
- ~~(b) clauses 4, 5 (other than clauses 5.3 and 5.4), and 9.3; and~~
- ~~(c) Schedule 5 of this Deed.~~

~~in accordance with the following procedure:~~

- ~~(i) the Trustees ~~have implemented~~ implement a Consumer Consultative Procedure in respect of ~~the proposed alteration or amendment;~~~~
- ~~(ii) Consumers approve the alteration or amendment by way of poll whereby each Consumer has one vote (regardless for the avoidance of doubt of the number of ICPS attributable to that Consumer) and a majority of not less than seventy five percent (75%) of the votes received are in favour of the alteration or amendment;~~
- ~~(iii) the alteration or amendment is approved by a unanimous resolution of all the Trustees; and~~

~~13.2(iv) If the Trustees consider based on legal advice that the approval of the High Court of New Zealand is necessary or advisable in respect of such ~~proposal to alter or amend~~ alteration or amendment, the approval of that High Court, ..~~

Formatted: Font: Verdana

Formatted: Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana

Formatted: List Paragraph, Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: List Paragraph, Outline numbered + Level: 4 + Numbering Style: i, ii, iii, ... + Start at: 1 + Alignment: Left + Aligned at: 2.2 cm + Tab after: 3.3 cm + Indent at: 3.3 cm, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana

Formatted: Font: Verdana

~~(a) the definition of "Consumers" or "District"; and~~

~~(b) clauses 4, 5, 6, 8, 9 or 14.~~

~~13.2 Notwithstanding clauses 13.1 and 13.2, no alteration or amendment may be made to this Deed that has the effect of limiting or restricting the obligations or powers of the Trustees under this Deed to:~~

~~(a) review proposals and available options for the ownership of the Shares; or~~

~~(b) call, transfer or dispose of the Shares in accordance with clause 9.2.~~

#### 14.13 WINDING UP OF TRUST

~~14.13.1 The Trustees may at any time after first having implemented a Consumer Consultative Procedure resolve by unanimous resolution to shall wind up the Trust, on 31 December 2050.~~

~~14.2 If the Trust holds less than 5 per cent of the total share capital of the Company and does not hold any debt security issued by the Company the Trustees shall implement a Consumer Consultative Procedure to determine whether to wind up the Trust.~~

~~14.3 If a resolution to wind up the Trust has not been passed by 1 January 2072, the Trustees shall as soon as practical thereafter pass the resolutions requiring the Trust to be wound up. If the resolutions have not been passed by 1 July 2072 the provisions of clause 14.4 shall apply as if the resolutions had been passed.~~

13.2 Notwithstanding clause 13.1, the Trustees may wind up the Trust at any time prior to 31 December 2050, provided that:

(a) the Trustees are of the opinion that the Trust Fund is not sufficient to enable the payment of the Rebate payment (or semi-annual instalment thereof) next falling due to Consumers, after taking into account other liabilities and expenses required to be met out of the Trust Fund; or

(b) the Trustees have otherwise first followed the procedure for altering or amending this Deed set out in clause 12.2 (as if such procedure was expressly stated to apply to a winding up of the Trust).

14.413.3 On the winding up of the Trust, all surplus assets after the payment of all costs, debts and liabilities shall be paid, applied or appropriated to or for or otherwise howsoever for the benefit of Consumers in accordance with clause 6.3.

Formatted: Font: Verdana

Formatted: Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Tab stops: Not at 1.1 cm + 14 cm

Formatted: Font: Verdana

Formatted: List Paragraph, Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Tab stops: Not at 1.1 cm + 14 cm

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: List Paragraph, Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Tab stops: Not at 1.1 cm + 14 cm

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana



- (a) the circumstances, nature, and seriousness of the breach of trust;
- (b) the Trustee's knowledge and intentions relating to the breach of trust;
- (c) the Trustee's skills and knowledge that are relevant to the role of trustee;
- (d) the purpose for which the Trustee was appointed;
- (e) any other circumstances, including whether the Trustee has been remunerated for the role, or characteristics of the Trustee that are relevant to the role of trustee;
- (f) the type of trust, including, without limitation, the degree to which the Trust is part of a commercial arrangement, the assets held by the trust, how the assets are used, and how the trust operates;
- (g) the purpose of the Trust, including, without limitation, what the Trust is intended to achieve, and whom the Trust is intended to benefit and in what ways; and
- (h) any other factor a court might consider relevant.

14.4

- (a) The Trustees, in respect of one or more of the Trustees, may take out trustees' liability insurance for such cover (including defence cover) and on such terms as the Trustees think fit.
- (b) Rather than having such insurance arranged by the Trustees, a Trustee may take out personal trustees' liability insurance for such cover and on such terms as that Trustee thinks fit.
- (c) In each case, the reasonable cost of premiums is to be treated as a legitimate expense of the Trust, and may be paid directly from the Trust Fund or by way of reimbursement to the Trustees or Trustee.

17.15 NOTICES

17.15.1 Any notices or documents to be given to the Trustees pursuant to this Deed shall be in writing signed by the person giving the notice and served at the office of the Trust.

17.15.2 Any notice or document given pursuant to clause 17.15.1 shall be deemed to be duly given or made:

- (a) if delivered by hand, when so delivered;

Formatted: Font: Verdana
Formatted: Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Tab stops: Not at 11 cm + 14 cm
Formatted: Font: Verdana
Formatted: List Paragraph, Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Tab stops: Not at 11 cm + 14 cm
Formatted: Font: Verdana
Formatted: List Paragraph, Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Keep with next, Tab stops: Not at 11 cm + 14 cm
Formatted: Font: Verdana
Formatted: Font: Verdana
Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Tab stops: Not at 11 cm + 14 cm

~~(b) if sent by facsimile, when receipt is confirmed;~~

~~(c) if sent by post, on the third working day after posting;~~

Formatted: Font: Verdana

Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana

~~(c) if sent by email, on the date and time at which it enters the addressee's information system (as shown in a confirmation of delivery report from the sender's information system, which indicates that the email was sent to the email address of the Trust as set out on its website).~~

IN WITNESS WHEREOF this Deed has been executed the day and year first hereinbefore written.

Formatted: Font: Verdana, Not Bold

Formatted: Font: Verdana

Executed as a Deed

THE COMMON SEAL of TRUSTPOWER LIMITED was affixed in the presence of:

"A Carpenter" "K. Tempest"

Signature of Authorised Person Signature of Authorised Person

Avon Leavett Carpenter Keith Neville Tempest

Name of Authorised Person Name of Authorised Person

Chairman Secretary

Office Held Office Held

SIGNED by

SHIRLEY MARGARET CROWLEY

in the presence of:

"C Bogun" \_\_\_\_\_ "S M Crowley"

\_\_\_\_\_  
Signature of Witness \_\_\_\_\_ Signature of SHIRLEY MARGARET CROWLEY

*C M Bogun*

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Occupation of Witness

\_\_\_\_\_  
Tauranga

\_\_\_\_\_  
Town of Residence



SIGNED by

IAN-FREDERICK FOOTE

in the presence of:

"C Bogun" \_\_\_\_\_ "I F Foote"

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of IAN-FREDERICK FOOTE

E-M Bogun  
\_\_\_\_\_  
\_\_\_\_\_

Name of Witness

Secretary  
\_\_\_\_\_  
\_\_\_\_\_

Occupation of Witness

Tauranga  
\_\_\_\_\_  
\_\_\_\_\_

Town of Residence

SIGNED by

BARRY WALTER BRAME JENSEN

in the presence of:

"C Bogun" \_\_\_\_\_ "B W B Jensen"

Signature of Witness \_\_\_\_\_ Signature of BARRY WALTER BRAME JENSEN

C M Bogun

Name of Witness

Secretary

Occupation of Witness

Tauranga

Town of Residence

SIGNED by

NOEL HAYWARD JOHNSON

in the presence of:

"C Bogun" \_\_\_\_\_ "Noel H Johnson"

Signature of Witness \_\_\_\_\_ Signature of NOEL HAYWARD JOHNSON

C-M Bogun

Name of Witness

Secretary

Occupation of Witness

Tauranga

Town of Residence

SIGNED by

NORMAN FREDERICK MAYO

In the presence of:

"C. Bogun" \_\_\_\_\_ "N. F. Mayo"

Signature of Witness \_\_\_\_\_ Signature of NORMAN FREDERICK MAYO

C. M. Bogun

Name of Witness

Secretary

Occupation of Witness

Tauranga

Town of Residence

SIGNED by

EDWARD McGREGOR MURRAY

in the presence of:

*"C. Begun"* \_\_\_\_\_ *"E. Murray"* \_\_\_\_\_

Signature of Witness \_\_\_\_\_ Signature of EDWARD McGREGOR MURRAY \_\_\_\_\_

*C.M. Begun*

Name of Witness

*Secretary*

Occupation of Witness

*Tauranga*

Town of Residence

SIGNED by

NOEL FRANK POPE

In the presence of:

*"C. Bogun"* \_\_\_\_\_ *"N. F. Pope"*

\_\_\_\_\_  
Signature of Witness \_\_\_\_\_ Signature of **NOEL FRANK POPE**

*C. M. Bogun*

\_\_\_\_\_  
Name of Witness

*Secretary*

\_\_\_\_\_  
Occupation of Witness

*Tauranga*

\_\_\_\_\_  
Town of Residence

SIGNED by

LYN-ARTHUR-WAHREN

in the presence of:

"C Bogun" \_\_\_\_\_ "L.A. Wahren"

Signature of Witness \_\_\_\_\_ Signature of LYN-ARTHUR-WAHREN

C-M Bogun

Name of Witness

Secretary

Occupation of Witness

Fouranga

Town of Residence

SIGNED by

RUFUS GEORGE WALLINGFORD

in the presence of:

“C Bogun” “R. G. Wallingford”

Signature of Witness \_\_\_\_\_ Signature of RUFUS GEORGE WALLINGFORD \_\_\_\_\_

C.M. Bogun

Name of Witness

Secretary

Occupation of Witness

Tauranga

Town of Residence



**SCHEDULE I**

**RULES GOVERNING THE**

### **SCHEDULE 1**

#### **TRUSTEES' DUTIES**

- 1 **Duty to know the terms of Trust:** A Trustee must know the terms of the Trust.
- 2 **Duty to act in accordance with the terms of Trust:** A Trustee must act in accordance with the terms of the Trust.
- 3 **Duty to act honestly and in good faith:** A Trustee must act honestly and in good faith.
- 4 **Duty to act for benefit of beneficiaries:** A Trustee must hold or deal with the Trust Fund and otherwise act for the benefit of the beneficiaries of the Trust, in accordance with the terms of the Trust.
- 5 **Duty to exercise powers for a proper purpose:** A Trustee must exercise the Trustee's powers for a proper purpose.
- 6 **Duty of care:** In administering the Trust (other than when exercising a discretion to distribute Trust property), a Trustee must exercise the care and skill that is reasonable in the circumstances. However, a Trustee who has, or holds out as having, special knowledge or experience, or who acts in the course of a business or profession, will not be held to a higher (or different) standard than any other Trustee. For the purposes of sections 5(4) and 5(5) of the Trusts Act this clause is to be regarded as a modification of section 29 of the Trusts Act.
- 7 **Duty to invest prudently:** In the exercise of the power of investment of Trust property, a Trustee must exercise the care and skill that a prudent person of business would exercise in managing the affairs of others. A Trustee who has, or holds out as having, special knowledge or experience, or who acts in the course of a business or profession, will not be held to a higher (or different) standard than any other Trustee. For the purposes of sections 5(4) and 5(5) of the Trusts Act this clause is to be regarded as a modification of section 30 of the Trusts Act.
- 8 **Duty not to exercise power for own benefit, duty to avoid conflicts of interest, duty not to profit and duty to act for no reward:** The following duties:
  - (a) **the duty in section 31 of the Trusts Act not to exercise a power directly or indirectly for the Trustee's own benefit;**
  - (b) **the duty in section 34 of the Trusts Act to avoid conflicts of interest;**
  - (c) **the duty in section 36 that a Trustee must not make a profit from the trusteeship of the Trust; and**
  - (d) **the duty in section 37 that a Trustee must not take any reward for acting as a Trustee.**

are modified pursuant to sections 5(4) and 5(5) of the Trusts Act so that each Trustee may act as a Trustee and still contract or otherwise deal with the Trustees in his or her personal capacity or in any other capacity (including without limitation as a TECT Community Trust Trustee) as if he or she had not been appointed as a Trustee and receive reimbursement, remuneration, fees or other profit on and to the extent provided in this Deed and provided the Trustee acts honestly and in good faith, in furtherance of the purposes for which this Trust is maintained and otherwise discharges the duties set out in clauses 1 to 6 of this Schedule.

**9 Duty to consider exercise of power:** A Trustee must actively and regularly consider whether the Trustee should exercise one or more of the Trustee's powers having regard to the nature of the power, the context of the Trust, the nature of the investments of the Trust and any other matters the Trustee considers relevant. For the purposes of sections 5(4) and 5(5) of the Trusts Act this clause 9 is to be regarded as a modification of section 32 of the Trusts Act.

**10 Duty not to bind or commit Trustees to future exercise of discretion:** The duty that a Trustee must not bind or commit the Trustees to a future exercise or non-exercise of a discretion is modified to the extent that a Trustee may bind or commit the Trustees to a future exercise or non-exercise of a discretion in relation to any matter relating to the Trust or the Trust Fund, if the Trustee considers it necessary or desirable for carrying out the purposes for which the Trust is maintained or any administrative or other functions of the Trustees and the Trustee acts honestly and in good faith, and otherwise discharges the duties set out in clauses 1 to 5 of this Schedule. For the purposes of sections 5(4) and 5(5) of the Trusts Act this clause 10 is to be regarded as a modification of section 33 of the Trusts Act.

**11 Duty to keep Core Trust Documents:**

**11.1 Each Trustee must keep, so far as is reasonable, the following Core Trust Documents relating to the Trust:**

- (a) the Trust Deed and any other document that contains the terms of the Trust;
- (b) any variations made to the Trust Deed or Trust;
- (c) records of the Trust property that identify the assets, liabilities, income, and expenses of the Trust and that are appropriate to the value and complexity of the Trust property;
- (d) any records of Trustee decisions made during the Trustee's trusteeship;
- (e) any written contracts entered into during that Trustee's trusteeship;
- (f) any accounting records and financial statements prepared during that Trustee's trusteeship;

(g) documents of appointment, removal, and discharge of Trustees (including any court orders appointing or removing Trustees);

(h) any other documents necessary for the administration of the Trust; and

(i) any documents referred to in this clause that were kept by a former Trustee during that person's trusteeship and passed on to the current Trustee.

11.2 If each Trustee holds at least:

(a) the Trust Deed and any other document that contains the terms of the Trust; and

(b) any variations made to the Trust Deed or Trust or copies of those documents.

the Trustees may agree that one or more of their number holds all other Core Trust Documents in clause 11.1 above, provided the Trustees are satisfied that those documents (or copies of them) will be made available to the other Trustees on request.

11.3 The Core Trust Documents must be kept for the duration of the Trustee's trusteeship. When that trusteeship ends, if the Trust continues, the Trustee must give at least one replacement Trustee or the continuing Trustees the Core Trust Documents held by the Trustee on the date the trusteeship ends.

**SCHEDULE 2**

Formatted: Heading 1, Line spacing: single

**APPOINTMENT, RETIREMENT AND PROCEEDINGS OF THE TRUSTEES**

Formatted: Font: Verdana, 9.5 pt

**1.1 NUMBER OF TRUSTEES**

Formatted: Font: Verdana, Bold

~~Until the first Annual General Meeting as provided herein the number of Trustees of the Trust from time to time shall be not less than six (6) nor more than nine (9) and after that date the same as those prescribed for the number of TECT Community Trust pursuant to the TECT Community Trust Deed.~~

Formatted: List Paragraph, Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Keep with next

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

**2 APPOINTMENT AND RETIREMENT**

~~(a) The Trustees of the Trust shall be six (6) PROVIDED THAT if at any time there be those same persons who are less than the minimum number of Trustees validly elected, or appointed, and continuing in the office specified for that period the remaining of a TECT Community Trust Trustee pursuant to the TECT Community Trust Deed at that time.~~

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

~~(b) For the avoidance of doubt, where a person pursuant to the TECT Community Trust Deed:~~

~~(i) is validly elected, or appointed, to the office of trustee of the TECT Community Trust;~~

~~(ii) resigns or is removed from the office of trustee of the TECT Community Trust; or~~

~~(iii) is no longer eligible to hold office as a trustee of the TECT Community Trust.~~

~~then such person shall also be, and be deemed to be (without further action being required to be taken), appointed to, resign from, or be removed from the office of Trustee of the Trust.~~

~~1.1(c) The Trustees acknowledge and agree that should they retire or be removed as a Trustee of the TECT Community Trust, then they will also retire as or otherwise cease to be a trustee of the Trust and will take all steps and complete all necessary documents to action and confirm the same. If notwithstanding the forgoing provisions of this clause 2 of this Schedule 2, any provision in this clause 2 deeming a Trustee to be elected or appointed to, or resigned or otherwise removed from, the office of Trustee is ineffective, then the statutory power of appointing new or replacement Trustees shall be entitled to act until, and the number of power to remove Trustees is restored to the minimum number and no act or decision of the, shall be vested in the TECT Community Trust Trustees shall be called in to question on such account.~~

Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana

- ~~1.2 The Trustees who have executed this deed as first trustees shall hold office until the conclusion of the first Annual General Meeting on which date six (6) of the Trustees (and any Trustee who may have been appointed to fill a casual vacancy of any of the first Trustees or a successor to any of the first Trustees) shall retire. The Trustees shall determine who among them shall retire (and, in the case of disagreement, this shall be determined by the drawing of lots).~~
- ~~1.3 Prior to the first Annual General Meeting three (3) Trustees shall be elected to replace the six (6) Trustees retiring in accordance with rule 1.2 in the manner specified in rule 3.4, such appointment to take effect contemporaneously with the retirement required by rule 1.2. A retiring Trustee shall be eligible for nomination for election subject to the other provisions of this Deed.~~
- ~~1.4 At the conclusion of the third Annual General Meeting those first Trustees who did not retire pursuant to rule 1.2 (and any Trustee who may have been appointed to fill a casual vacancy of any of the first Trustees or a successor to any of the first Trustees) shall retire.~~
- ~~1.5 Prior to the third Annual General Meeting three (3) Trustees shall be elected to replace the three (3) Trustees retiring in accordance with rule 1.4 in the manner specified in rule 3.4, such appointment to take effect contemporaneously with the retirement required by rule 1.4. A retiring Trustee shall be eligible for nomination for election subject to the other provisions of this Deed.~~
- ~~1.6 From and including the fifth Annual General Meeting and at every second Annual General Meeting occurring thereafter, three (3) Trustees shall retire from office. The Trustees to retire at any Annual General Meeting shall firstly be any Trustee(s) (if any) appointed to fill any casual vacancy since the last Trustee election and secondly the required number of elected Trustees (to make the number of retiring Trustees three (3) in total) who have been longest in office since their election. If there are more elected Trustees due to retire than the required number of elected Trustees to retire as determined in accordance with the previous sentence, then the elected Trustees to retire shall be determined by lot. Such retiring Trustees shall retire at the conclusion of the relevant Annual General Meeting.~~

~~Where a casual vacancy is not filled pursuant to clause 1.7 of this Schedule and remains open at the next Annual General Meeting at which an election of Trustees is to take place, then (for the purposes of this clause and in order to determine the required number of elected Trustees to retire) such vacancy shall be deemed to be have been filled.~~

~~The new Trustees who have been elected in accordance with clause 3.4 of this Schedule, who may, subject to the other provisions of this Deed, include Trustees who have retired, shall be appointed at the conclusion of that Annual General Meeting.~~

~~1.7 Any casual vacancy in the number of Trustees:~~

~~(a) shall, in the case of a vacancy occurring more than 12 months prior to the next scheduled election of Trustees; or~~

~~(b) may, in any other case,~~

~~be filled within 2 months of that vacancy occurring providing that the new appointee shall, subject to clause 1.6, hold office only for the residue of the term of office of the Trustee whose place is taken.~~

Any new appointee may be chosen at the discretion of the remaining Trustees having regard to the range and nature of skills of the appointee so that such skill set complements those of the remaining Trustees and which will add value to the good decision making by Trustees in their administration of the Trust.

## **2. ELIGIBILITY**

**2.1** Subject to rule 2.2, the following persons shall not be eligible for appointment as a Trustee and may not hold office as a Trustee:

- (a) a bankrupt who has not obtained a final order of discharge or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled, or to any order under section 111 of the Insolvency Act 1967;*
- (b) a person who has been convicted of any offence punishable by a term of imprisonment of two or more years unless that person has obtained a pardon or has served the sentence or otherwise suffered the sentence imposed upon that person;*
- (c) a person who has been sentenced to imprisonment for any offence unless that person has obtained a pardon or has served the sentence;*
- (d) a person to whom an order made under section 199 of the Companies Act 1955 applies;*
- (e) a person who is mentally disordered within the meaning of the Mental Health Act 1969;*
- (f) a person who is subject to a property order made under section 20 or section 31 of the Protection of Personal and Property Rights Act 1988;*
- (g) a person who is not ordinarily resident in the District;*
- (h) a person who is an employee or a Director of the Company (other than a Trustee who has been appointed to the board of the Company as a Director following nomination for that office pursuant to a Special Resolution of the Trustees);*
- (i) the Secretary or the Treasurer;*
- (j) a person who is not, or who ceases to be, a Consumer;*
- (k) a person who is, or becomes, a member of parliament in New Zealand;*
- (l) a person who is, or becomes, a councillor or employee of any Local Authority whose territory includes any part of the District;*
- (m) a person who is, or becomes, a member (whether elected or appointed) of a Community Board (as that term is defined in the Local Government Act 1974) whose territory includes any part of the District.*

**2.2** A person shall not be disqualified from appointment and may continue to hold that office:

- (a) in any case to which rule 2.1(b) applies, until the expiration of the time for appealing against the conviction and, in the event of an appeal against conviction, until the appeal has been determined;*

~~(b) — in any case to which rule 2.1(c) applies, until the expiration of the time for appealing against the sentence of imprisonment and, in the event of an appeal, until the appeal has been determined;~~

~~(c) — in any case to which rule 2.1(h) applies, until the declaration of the result of the first election of Trustees pursuant to rule 2.4(e) or 2.4(h);~~

~~(d) — in any case to which rule 2.1(h) applies, after the declaration of the result of the first election of Trustees pursuant to rule 2.4(e) or 2.4(h), if the Trustee resigns the office or employment disqualifying that Trustee from holding office as Trustee, which resignation is to have effect within two weeks of appointment as a Trustee.~~

~~2. — TERM OF OFFICE~~

~~2.1 — A Trustee shall cease to hold office if~~

~~(a) — the Trustee resigns by written notice to the Trustees;~~

~~(b) — the Trustee is ineligible for election or appointment as a Trustee pursuant to rule 2.3;~~

~~(c) — the Trustee dies while holding office as a Trustee;~~

~~(d) — the Trustee is not re-elected pursuant to rule 2.4, when the Trustee shall retire at an Annual General Meeting as specified in rule 2.4(n);~~

~~(e) — the Trustee does not attend 2 consecutive monthly Trustees meetings of which notice has been properly given without the prior consent of the remaining Trustees.~~

~~2.2 — The provisions of rule 2.3 shall apply, mutatis mutandis, to rule 2.1. During any appeal period the Trustee shall be deemed to have taken leave of absence and shall not be capable of acting as a Trustee. If the conviction or sentence of imprisonment (as the case may be) is not upheld the Trustee shall be immediately reinstated. If the conviction or sentence (as the case may be) is upheld the disqualification as Trustee shall take immediate effect.~~

~~2.3 — Upon every appointment, reappointment, retirement or cessation of office of any Trustee the Trustees shall cause an entry thereof to be recorded in the minute book of the Trust.~~

~~2.4 — Other than the first Trustees as set out in rule 1.2 and any casual vacancy Trustee(s) appointed pursuant to rules 1.7 and 5(c), all Trustees shall be elected by the Consumers (determined in accordance with rule 2.4(a) and every reference to "Consumer" in rules 2.4(f), (g) and (i) shall be a reference to those Consumers as so determined) in the following manner, or in such other manner as the Trustees may by Special Resolution determine from time to time:~~

~~(a) — Not later than nine weeks before the proposed date of the election the Independent Returning Officer shall insert a notice in a newspaper or newspapers circulating in the District giving:~~

~~(i) — advice of the proposed election;~~

~~(ii) — the place or places at which nomination forms may be obtained;~~

~~(iii) — where completed nominations may be lodged; and~~



- ~~(iv) — notice that the nominator, candidate and seconder must be, at the time of making the nomination, Consumers;~~
- ~~(v) — the day and time nominations close.~~
- ~~(b) — Every nomination of a candidate shall be in writing. Nomination forms shall be in such form as the Independent Returning Officer decides, but shall include:~~
  - ~~(i) — the full name and address of the candidate;~~
  - ~~(ii) — a statement by the candidate that the candidate is not, and to the best of the candidate's knowledge and belief will not be on the date of the election, disqualified from holding office as a Trustee by reason of any of the matters set out in rule 2.1. If the candidate would be disqualified from holding office because of rule 2.1(h), the candidate shall not be so disqualified if the statement is accompanied by a further statement that should that candidate be elected he or she shall immediately resign that office or employment which causes him or her to be disqualified under rule 2.1(h); and~~
  - ~~(iii) — the signature of the nominator and seconder and the candidate all of whom must be Consumers.~~

~~The Independent Returning Officer shall be entitled to declare any nomination invalid where on reasonable grounds he has good cause to believe that the candidate is ineligible for election in terms of rule 2.1.~~

- ~~(c) — The nomination of a candidate shall be deemed to have never been made, and the candidate shall be ineligible for election, if the:~~
  - ~~(i) — nominator withdraws the nomination by notice received by the Independent Returning Officer before closure of nominations;~~
  - ~~(ii) — candidate withdraws by notice received by the Independent Returning Officer before a result is declared;~~
  - ~~(iii) — candidate dies before a result is declared;~~
  - ~~(iv) — candidate becomes disqualified by virtue of rule 2.1 before a result is declared.~~
- ~~(d) — Nominations shall close four weeks after the first notice calling for nominations was given pursuant to rule 2.4(a).~~
- ~~(e) — If, on the closure of nominations, the number of valid nominations which have been received are equal to or less than the number of vacancies for the office of Trustee the Independent Returning Officer shall declare the candidate duly elected and no election shall be held. If less nominations are received than there are vacancies, the Trustees shall forthwith fill the vacancy or vacancies in accordance with rule 3.7 and a retiring Trustee who has not been nominated shall be eligible to fill a vacancy.~~
- ~~(f) — Should nominations be received for more than the number of vacancies, the Independent Returning Officer shall conduct an election of Trustees pursuant to this clause 2.4.~~

The Independent Returning Officer may, acting upon an instruction of the Trustees, use any of the following voting methods:

- (i) the method of voting commonly known as booth voting;
- (ii) the method of voting commonly known as postal voting;
- (iii) any form of electronic voting;
- (iv) any method of voting involving a combination of more than one of the methods referred to in subparagraphs (i) to (iii) above; or
- (v) any other method of voting, howsoever described.

The Independent Returning Officer shall give, not less than three weeks prior to the date on and the time at which voting is to close (in this clause 3.4, "Voting Period"), to the Consumers, in such manner as the Independent Returning Officer shall deem fit, a postal and/or electronic ballot paper which shall contain:

- (vi) the names of all candidates validly nominated in alphabetical order of their surnames and appropriate provision for recording the Consumer's vote;
- (vii) if postal voting is to be used, a pre-paid envelope in which the ballot paper is to be placed and returned to the Independent Returning Officer; and
- (viii) a written explanation of the method for recording the Consumer's vote, the manner in which the ballot paper is to be returned, and the date and time at which the Voting Period is to close.

Biographical and other details of the candidates may, if the Trustees approve, be included in the information given to Consumers.

- (g) The following provisions shall apply with respect to votes:
  - (i) each Consumer shall be distributed one voting paper (which may be in electronic format) and each Consumer shall only be entitled to one vote;
  - (ii) in respect of joint Consumers the person whose name appears on the records of the Company first shall exercise the vote for that joint holding to the exclusion of the other joint holders;
  - (iii) Consumers may not vote for the appointment of more Trustees than there are vacancies;
  - (iv) Ballot papers (whether or not in electronic format) received by the Independent Returning Officer after the date and time stated in the notice to Consumers as the date and time at which the Voting Period is to close shall not be counted.
- (h) The Independent Returning Officer shall, after close of the Voting Period, count the number of valid votes cast for each candidate and ascertain the candidate elected. The Independent Returning Officer is permitted and may in its discretion commence the counting of votes and the processing of ballot papers received prior to the expiry of the Voting Period.
- (i) A vote is invalid and shall not be counted if:
  - (i) the Consumer votes for more candidates than there are Trustees to be elected; or

- ~~(ii) in the opinion of the Independent Returning Officer, the ballot paper does not clearly indicate the candidate or candidates for whom the Consumer intended to vote.~~
- ~~(j) Where, because two (2) or more candidates have received the same number of valid votes, the Independent Returning Officer cannot determine which of them has been elected, the Independent Returning Officer shall decide which of them is elected by lot drawn by those candidates in the presence of the Independent Returning Officer and such other person or persons (if any) as the Independent Returning Officer may decide.~~
- ~~(k) Forthwith after ascertaining which candidates have been elected, the Independent Returning Officer shall declare the names of the candidates so elected, and shall publish those names in one or more principal newspapers circulating in the District. The candidates elected shall be appointed Trustees at the conclusion of the relevant Annual General Meeting as specified in rules 3.2, 3.5 and 3.6.~~
- ~~(l) After declaring the result of the election the Independent Returning Officer shall decide when to destroy the voting papers and/ or to permanently delete any computer records or files relating to votes cast electronically.~~
- ~~(m) The Independent Returning Officer and every person assisting the Independent Returning Officer shall faithfully and impartially perform their duties and shall not, directly or indirectly:
  - ~~(i) before the declaration of the result of the election make known the state of the vote, or give or pretend to give any information by which the state of the vote might be known;~~
  - ~~(ii) make known for which candidate or candidates any person has voted; or~~
  - ~~(iii) give any person any information likely to defeat the secrecy of the election.~~~~
- ~~(n) Notwithstanding any other provision in the Deed or these rules, the retiring Trustees shall remain in office until the conclusion of the Annual General Meeting at which they are to retire as specified in rules 3.2, 3.5 and 3.6. Forthwith upon the conclusion of the relevant Annual General Meeting the candidates declared elected pursuant to rule 3.4(e) or 3.4(k) shall assume office in place of the retiring Trustees.~~
- ~~(o) The Consumers who shall be entitled to vote for the appointment of Trustees shall be those persons who are Consumers on the date nominations for candidates close or specified in accordance with rule 3.4(e)(v).~~
- (d) Upon every change of trustees, the Trust Fund shall be vested in the Trustees for the time being in office.

**4.3 CHAIRPERSON AND DEPUTY CHAIRPERSON**

~~The Trustees shall elect a persons who are elected as Chairperson and (if applicable) Deputy Chairperson, who shall also of the TECT Community Trust by the TECT Community Trust Trustees from time to time shall be Trustees, at the first meeting of Trustees after the Annual General Meeting in each year deemed to be elected as Chairperson and at any other time when either position becomes vacant.~~

**5. QUORUM**

~~(a) A quorum at meetings of the Trustees shall comprise four (4) Trustees.~~

~~(b) Notwithstanding rule 3.2, no business may be transacted at a meeting of Trustees if a quorum is not present.~~

~~(c) Notwithstanding rule 5(b), where the number of Trustees in office at any relevant time is less than the number of Trustees required to form a quorum, then the remaining Trustees may convene a meeting (if applicable) Deputy Chairperson of the Trust for the sole purpose of appointing additional Trustees so that there are at all times at least the minimum number of Trustees in office required to form a quorum.~~

~~(d) Any new Trustee(s) appointed pursuant to rule 5(c) shall hold office for the period from the date of their appointment until the next Annual General Meeting at which a Trustee election is held. Such new Trustee(s) shall retire at that next Annual General Meeting as if they had been appointed to fill a casual vacancy in terms of rule 3.6.~~

~~(e) Any new Trustee appointed pursuant to rule 5(c) shall have all the powers and responsibilities of a Trustee as if elected to that office pursuant to rule 3.4 and no act or decision of the remaining Trustees pursuant to this rule 5 or of the new Trustee(s) pursuant to this Deed shall be called into question on such account.~~

**6.1 VALIDITY OF PROCEEDINGS**

~~6.1 All acts done by any meeting of Trustees or of a committee of Trustees or by any person acting as a Trustee shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Trustee or person acting as aforesaid or that the majority of them were for any reason disqualified, be as valid as if such person had been duly appointed and was qualified to be a Trustee.~~

**7. RESCISSION OR VARIATION OF RESOLUTIONS**

~~Any resolution of the Trustees may be rescinded or varied from time to time by the Trustees at any subsequent meeting by the same majority as was necessary to pass the resolution being rescinded or varied.~~

Formatted: Font: Verdana, Bold

Formatted: List Paragraph, Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Don't keep lines together, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Times Roman, 12 pt, English (United States), Condensed by 0.15 pt

Formatted: Font: Times Roman, 12 pt, English (United States), Condensed by 0.15 pt

Formatted: Font: Times Roman, 12 pt, English (United States), Condensed by 0.15 pt

Formatted: Font: Times Roman, 12 pt, English (United States), Condensed by 0.15 pt

Formatted: Font: Times Roman, 12 pt, English (United States), Condensed by 0.15 pt

Formatted: Font: Verdana

Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: Font: Verdana, Bold

Formatted: List Paragraph, Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Keep with next, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana

Formatted: Font: Verdana, 9.5 pt

Formatted: Normal, Indent: Left: 1.1 cm

Formatted: Font: Verdana, 9.5 pt

**8.4 MEETINGS OF TRUSTEES**

~~8.1 The Trustees shall hold an Annual General Meeting no later than by 30 November in each calendar year.~~

Formatted: Font: Verdana, Bold  
Formatted: List Paragraph, Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Don't keep lines together, Tab stops: Not at 11 cm + 14 cm  
Formatted: Font: Verdana

~~8.2 The Secretary shall give no less than thirty (30) days notice of the annual general meeting to the Trustees such notice to specify the date, time and place of the annual general meeting.~~

~~8.3 (a) The business to be transacted at the Annual General Meeting of Trustees shall be the receipt of the annual report (including a report on the performance of the Trust against its annual plan objectives for the relevant year), the annual plan and the audited Financial Statements and the setting of the remuneration (if any) of Trustees. Any other business shall be deemed special business and shall be dealt with in accordance with rule 8.4.~~

~~(a) At the conclusion of the Annual General Meeting of Trustees or at such other time as the Trustees shall decide, the annual meeting of Consumers shall be convened pursuant, **subject to clause 10.5** and the Code of Practice for the purposes (among other things if the Trustees so decide) of appointing an Independent Returning Officer for the next Trustee election (in the case of a general meeting of Consumers held in a non-Trustee election year), fixing the Independent Returning Officer's fees and expenses, appointing an auditor for the Trust, fixing the auditor's fees and expenses and, if applicable, fixing the amount of remuneration payable to Trustees pursuant to clause 12.1(b)(i).~~

Formatted: Font: Verdana

~~8.4 Notice in writing of any special business shall be given to the Secretary no less than twenty one (21) days prior to the annual general meeting. The Secretary shall circulate an agenda, including all special business, to the Trustees no later than fourteen (14) days prior to the annual general meeting and shall also give to Consumers not less than fourteen (14) days prior written notice of the time, place, date and agenda of the annual general meeting by an advertisement placed in a newspaper or newspapers circulating in all the areas of the District.~~

~~8.5 Consumers shall be entitled to attend and speak at the annual general meeting but shall not be entitled to vote at such meetings.~~

~~8.6(a) The Trustees shall otherwise **7 of this Schedule 2**, meet at such times and places as they may agree to dispatch the business of the Trust. The Trustees shall be entitled from time to time to develop protocols and standing orders for the management of Trustee behaviour and for the orderly conduct of Trustee meetings, and any such protocols and / or standing orders so adopted shall bind Trustees in their administration of the Trust.~~

Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana  
Formatted: Font: Verdana

Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Tab stops: Not at 11 cm + 14 cm

~~8.7(b) Other than a meeting of Trustees called pursuant to rule 5(c), any **Any** three (3) or more Trustees may at any time summon a meeting of Trustees.~~

Formatted: Font: Verdana  
Formatted: Font: Verdana

Formatted: Font: Verdana, Bold

**9.5 NOTICE OF MEETINGS**

~~(a) Notice in writing of every meeting shall be sent by such method of delivery (whether electronic or otherwise) as is determined by the Trustees from time to time to each Trustee by the **Secretary/Chief Executive** or other~~

Formatted: List Paragraph, Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Keep with next, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana, 9.5 pt

Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm

Formatted: Font: Verdana, 9.5 pt

person acting under the direction of the Trustees, ~~or of the Chief Executive.~~  
In the case of a meeting summoned pursuant to ~~rule 8.7 clause 4(b) of this~~  
~~Schedule 2~~, the Trustees, ~~Chief Executive,~~ persons summoning ~~it or the~~  
~~secretary meeting~~ or other person acting under the direction of the Trustees  
~~or Chief Executive, as the case may be,~~ shall give at least ~~seven (7)~~ ~~five (5)~~  
working ~~days~~ notice of that meeting. No notice shall be necessary for  
adjourned meetings except to Trustees not present when the meeting was  
adjourned.

Formatted: Font: Verdana, 9.5 pt

Formatted: Font: Verdana, 9.5 pt

Formatted: Font: Verdana, 9.5 pt

Formatted: Font: Verdana, 9.5 pt

Formatted: Font: Verdana, 9.5 pt

Formatted: Font: Verdana, 9.5 pt

Formatted: Font: Verdana, 9.5 pt

Formatted: Font: Verdana, 9.5 pt

Formatted: Font: Verdana, 9.5 pt

~~The expression "working days" in this clause shall exclude weekends and public holidays  
and such notice period shall exclude the date of the notice and the date of the relevant  
meeting.~~

#### 10. ADJOURNMENT

~~If a quorum is not present within thirty minutes after the time appointed for any meeting  
the Trustee or Trustees present may adjourn the meeting. Any meeting may be  
adjourned by the Chairperson upon the adoption of a resolution for its adjournment.~~

Formatted: Font: Times Roman, 12 pt, English (United States), Condensed by 0.15 pt

#### 11. CONTENT OF NOTICE

(b) Every notice of meeting shall state the place, day, and hour of the meeting  
and every notice of a meeting summoned pursuant to ~~rule 8.7 clause 4(b) of~~  
~~this Schedule 2~~ shall state the matters to be discussed at that meeting.  
Notice of any meeting may be abridged or waived if all the Trustees who  
are for the time being in New Zealand consent in writing to such  
abridgement or waiver.

Formatted: Font: Verdana, 9.5 pt

Formatted: List Paragraph, Outline numbered + Level: 3 +  
Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left +  
Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm

Formatted: Font: Verdana, 9.5 pt

Formatted: Font: Verdana, 9.5 pt

### 6. QUORUM FOR TRUSTEE MEETINGS

(a) ~~A quorum at meetings of the Trustees shall comprise four (4) Trustees.~~

Formatted: Font: Verdana

(b) ~~No business may be transacted at a meeting of Trustees if a quorum is not  
present, and the meeting shall be adjourned in accordance with clause 8 of  
this Schedule 2.~~

Formatted: List Paragraph, Outline numbered + Level: 3 +  
Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left +  
Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm,  
Tab stops: Not at: 11 cm + 14 cm

### 7. ANNUAL GENERAL MEETING OF TRUSTEES

~~The Trustees shall hold an Annual General Meeting of Trustees no later than by 30  
November in each calendar year. The following provisions shall apply with respect  
to that Annual General Meeting:~~

(a) ~~The Chief Executive shall give no less than twenty (20) working days' notice  
of the Annual General Meeting to the Trustees such notice to specify the  
date, time and place of the Annual General Meeting.~~

(b) ~~The business to be transacted at the Annual General Meeting of Trustees  
shall be the receipt of the annual report (including a report on the~~

performance of the Trust against its annual plan objectives for the relevant year), the annual plan and the audited Financial Statements. Any other business shall be deemed special business and shall be dealt with in accordance with clause 7(c) of this Schedule 2.

(c) Notice in writing of any special business shall be given to the Chief Executive no less than fifteen (15) working days prior to the Annual General Meeting. The Chief Executive shall circulate an agenda, including all special business, to the Trustees no later than ten (10) working days prior to the Annual General Meeting and shall also give to Consumers not less than ten (10) working days' prior written notice of the time, place, date and agenda of the Annual General Meeting by notice on a website maintained by the Trust.

**8 ADJOURNMENT OF TRUSTEE MEETINGS**

(a) If a quorum is not present within thirty minutes after the time appointed for any meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as all Trustees who are entitled to vote may agree and, if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the Trustees present will constitute a quorum.

(b) The Chief Executive will give written notice of a meeting which is adjourned pursuant to clause 8(a) of this Schedule 2 to all Trustees, which must be accompanied by the agenda for the adjourned meeting and any Trustee papers reasonably required to assist the Trustees to assess the matters due for consideration at the adjourned meeting.

(c) Any meeting may be adjourned by the Chairperson upon the adoption of a resolution for its adjournment.

Formatted: Font: Verdana

**12.9 COMMITTEES**

The Trustees may from time to time appoint any one or more Trustees to be a committee for making any inquiry, for considering supervising or transacting any business of the Trust, for the investment and management of the Trust Funds or any part thereof, or for the performance of any duty or function which in the opinion of the Trustees will further the purposes and objects of the Trust. Subject to these rules and to any directions from time to time given by the Trustees every such committee may regulate its own procedure but so that a quorum at any meeting of the committee will be a majority of its members for the time being.

Formatted: Font: Verdana, Bold

Formatted: List Paragraph, Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Don't keep lines together, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana, 9.5 pt

Formatted: Normal, Indent: Left: 1.1 cm, Don't keep with next, Don't keep lines together

Formatted: Font: Verdana, 9.5 pt

Formatted: Font: Verdana, Bold

Formatted: List Paragraph, Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Keep with next, Tab stops: Not at 11 cm + 14 cm

**13.10 VOTING**

Formatted: Font: Verdana

13.1(a) Except as otherwise provided in this Deed and subject to the quorum requirements as to meetings, the Trustees shall exercise their powers and discretions by a simple majority vote of the Trustees present.

Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana

~~13.2(b) The Chairperson or Deputy Chairperson acting as the chairperson of a meeting of Trustees shall have a second and casting vote in addition to his or her deliberative vote provided that such casting vote may only be exercised in the case of Trustee deadlock when voting on any particular issue and where such casting vote is made for continuance of the status quo.~~

Formatted: Font: Verdana  
Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Tab stops: Not at 11 cm + 14 cm  
Formatted: Font: Verdana

~~14. INTERESTED TRUSTEES~~

~~11 DISCLOSURE OF INTERESTS~~

~~(a) A Trustee will be interested in a transaction to which the Trust is a party if the Trustee:~~

Formatted: Font: Verdana

~~(i) is a party to, or will derive a material financial benefit from that transaction;~~

~~(ii) has a material financial interest in another party to the transaction;~~

~~(iii) is a director, officer or trustee of another party to, or person who in any way, whether will or may derive a material financial benefit from the transaction, not being a party that is wholly owned by the Trust;~~

Formatted: Font: Verdana

~~(iv) is the parent, child or spouse of another party to, or person who will or may derive a material financial benefit from the transaction; or~~

~~(v) is otherwise directly or indirectly, has a material interest in any contract interested in the transaction.~~

Formatted: Font: Verdana

~~(b) As soon as a Trustee becomes aware of the fact that they are interested in a transaction or proposed contract or arrangement or dealing transaction with the Trust (other than as a Consumer or as a member, officer, or employee of any firm, company or organisation that is a Consumer) shall, they must disclose to their co-Trustees:~~

Formatted: Font: Verdana  
Formatted: Font: Verdana  
Formatted: Font: Verdana

~~(i) if the monetary value of the Trustee's interest is able to be quantified, the nature and monetary value of that interest at a meeting; or~~

Formatted: Font: Verdana

~~(ii) if the monetary value of the Trustee's interest cannot be quantified, the nature and extent of that interest.~~

Formatted: Font: Verdana

Formatted: Font: Verdana

~~14.1(c) A disclosure of interest by a Trustee must be recorded in the minute book of the Trust. The Trustees shall record or cause to be recorded in the minute book of the Trust a disclosure of interests on behalf of all Trustees from time to time for such time as the Trustees of the Trust are the same persons as the trustees of the TECT Community Trust, and such disclosure shall be recorded in the minutes of the meeting. A trustee who holds beneficially (directly or indirectly) less than 20,000 shares in the Company shall not be required to disclose that shareholding deemed to relate to, and be satisfactory for, all transactions or other dealings between the Trust and the TECT Community Trust or any entity controlled by the TECT Community Trust.~~

Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Don't keep with next, Don't keep lines together, Tab stops: Not at 11 cm + 14 cm  
Formatted: Font: Verdana  
Formatted: Font: Verdana

Formatted: Font: Verdana



~~14.2 A Trustee required to disclose an interest by rule 14.1 may be counted in a quorum present at a meeting but shall not vote in respect of the matter in which the Trustee is interested (and if the Trustee does so vote the vote shall not be counted) provided that the Trustee may be expressly permitted to vote by a unanimous vote of the other Trustees present given after the disclosure of the interest.~~

~~14.3 If any question shall arise at any meeting as to the materiality of a Trustee's interest or as to the entitlement of any Trustee to vote and such question is not resolved by the Trustee voluntarily agreeing to abstain from voting, such question shall be referred to the Chairperson of the meeting and the Chairperson's ruling in relation to any such Trustee shall be final and conclusive except in a case where the nature or extent of the interest of the Trustee concerned has not been fairly disclosed.~~

~~(d) Although a Trustee who is interested in a transaction entered into or to be entered into by the Trust may not vote on a matter relating to the transaction, nor be included among the Trustees present at the meeting for the purpose of determining a quorum under clause 4 of this Schedule 2 the Trustee may:~~

~~(i) attend a meeting of Trustees at which a matter relating to the transaction arises;~~

~~(ii) sign a document relating to the transaction on behalf of the Trust; and~~

~~(iii) do anything else as a Trustee in relation to the implementation of the transaction, as if he or she were not interested in the transaction.~~

#### ~~15.12 MINUTES~~

~~15.1(a) A minute book shall be provided and kept by the Trustees and all proceedings of the Trustees shall be entered in the minute book. The minute book may be kept in physical or electronic form.~~

~~15.2(b) Minutes signed by the chairperson of the meeting at which the proceedings were transacted or by the chairperson of the next succeeding meeting shall be evidence of the proceedings.~~

~~15.3(c) Where minutes of the proceedings at any meeting of Trustees have been made in accordance with the provisions of these rules then, until the contrary is proved, the meeting shall be deemed duly held and convened and all proceedings at that meeting to have been duly conducted.~~

#### ~~16.13 RESOLUTIONS IN WRITING~~

Formatted: Font: Verdana, Bold

Formatted: List Paragraph, Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Don't keep lines together, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana

Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Don't keep with next, Don't keep lines together, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana

Formatted: Font: Verdana

Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Tab stops: Not at 11 cm + 14 cm

Formatted: Font: Verdana

Formatted: Font: Verdana, Bold

Formatted: List Paragraph, Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Keep with next, Tab stops: Not at 11 cm + 14 cm

Notwithstanding any other provisions in the Deed or these rules, a resolution in writing signed by all the Trustees or (as the case may be) by all the members of a committee, shall be as effective for all purposes as a resolution passed at a meeting of the Trustees or of such committee (as the case may be) duly convened, held and constituted. Such resolution may consist of several documents in the same form, each signed by one or more of the Trustees or members of the committee, (as the case may be), including by affixing of an electronic signature to a document.

Formatted: Font: Verdana, 9.5 pt  
Formatted: Normal, Indent: Left: 1.1 cm

Formatted: Font: Verdana, 9.5 pt

**17.14 MEETINGS BY TELEPHONE / VIDEO CONFERENCING**

17.14(a) Notwithstanding any other provision in ~~the~~**this** Deed or these rules, the contemporaneous linking together of a number of the Trustees or members of a committee ~~(the participants)~~ being not less than a quorum, together with the ~~Secretary or a~~ person acting as a secretary, shall be deemed to constitute a meeting and all the provisions in these rules as to meetings shall apply to such meetings by telephone ~~so long as the following conditions are met~~ or by video conferencing.

Formatted: Font: Verdana, Bold  
Formatted: List Paragraph, Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Don't keep lines together, Tab stops: Not at 11 cm + 14 cm  
Formatted: Font: Verdana, Bold  
Formatted: Font: Verdana  
Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Don't keep with next, Don't keep lines together, Tab stops: Not at 11 cm + 14 cm  
Formatted: Font: Verdana  
Formatted: Font: Verdana  
Formatted: Font: Verdana  
Formatted: Font: Verdana

(a) ~~All the participants for the time being entitled to receive notice of a meeting shall be entitled to notice of a meeting by telephone and to be linked by telephone for the purposes of such meeting. Notice of such meeting may be given by telephone;~~

(b) ~~Each of the participants taking part in the meeting by telephone, and the Secretary or person acting as a secretary, must be able to hear each of the others taking part at the commencement of the meeting;~~

(c) ~~At the commencement of the meeting each participant must acknowledge his or her presence for the purpose of such meeting to all the others taking part;~~

(d) ~~A participant may not leave the meeting by disconnecting his or her telephone without having previously obtained the express consent of the chairperson of the meeting and shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone unless having obtained the express consent of the chairperson to leave the meeting as aforesaid.~~

17.2(b) Minutes of the proceedings at such meeting by telephone shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the chairperson of the meeting or by the ~~Secretary or a~~ person acting as a secretary.

Formatted: Font: Verdana  
Formatted: Font: Verdana  
Formatted: List Paragraph, Outline numbered + Level: 3 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Tab after: 2.2 cm + Indent at: 2.2 cm, Tab stops: Not at 11 cm + 14 cm

**15 VALIDITY OF PROCEEDINGS**

~~All acts done by any meeting of Trustees or of a committee of Trustees or by any person acting as a Trustee shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Trustee or person acting as aforesaid or that they or any of them were for any reason disqualified,~~

Formatted: Font: Verdana  
Formatted: Font: Verdana  
Formatted: Font: Verdana, Bold  
Formatted: List Paragraph, Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Keep with next, Tab stops: Not at 11 cm + 14 cm  
Formatted: Font: Verdana

be as valid as if such person had been duly appointed and was qualified to be a Trustee.

**18.16 EXECUTION OF DOCUMENTS**

All documents required to be executed by the Trustees shall be deemed to be validly executed and binding on the Trust if these documents have been entered into and executed by the authority of the Trustees previously given and signed by at least two (2) Trustees or any other person approved by the Trustees for the purpose.

Formatted: Font: Verdana, Bold

Formatted: List Paragraph, Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.1 cm + Indent at: 1.1 cm, Keep with next, Tab stops: Not at 1.1 cm + 1.4 cm

Formatted: Font: Verdana, 9.5 pt

Formatted: Normal, Indent: Left: 1.1 cm

Formatted: Font: Verdana, 9.5 pt

~~19. SECRETARY AND TREASURER~~

~~19.1 The Trustees shall appoint from time to time a Secretary and a Treasurer who may be the same person.~~

~~19.2 It shall be the duty of the Secretary to keep usual records of the business of the Trust and to notify Trustees of intended meetings and the business to be transacted at such meetings.~~

~~19.3 It shall be the duty of the Treasurer to keep usual and proper books of account and other financial records of the business to report to the Trustees from time to time on the finances of the Trust Fund to present annual statements of account for audit and for consideration by the Trustees and to prepare and file from time to time with the Inland Revenue Department all necessary tax accounts.~~

**SCHEDULE II  
TRUSTEES' SPECIFIC POWERS**

Formatted: Font: Times Roman, 12 pt, Not Bold, English (United States), Condensed by 0.15 pt

Subject to any express terms in this Deed limiting or restricting such powers, the Trustees shall have the power to:

- ~~(a) Invest the Trust Fund or any portion thereof, notwithstanding that it may be subject to any liability, in any property whether in New Zealand or overseas.~~
- ~~(b) Sell all or any part of the property comprising the Trust Fund at such price on such terms and subject to such conditions as they in their absolute discretion think fit with power to allow the whole or any part of the purchase money to remain owing as a debt to the Trust.~~
- ~~(c) Retain property forming part of the Trust Fund.~~
- ~~(d) Borrow or raise moneys on such terms and subject to such conditions as the Trustees think fit, including giving such security as the Trustees think fit over all or any of the Trust Fund and its undertaking.~~
- ~~(e) Lease or to take on lease or licence any property on such terms and subject to such conditions as they think fit and to accept or effect such surrenders of leases and licences as they think fit.~~
- ~~(f) Lend moneys on such terms and subject to such conditions as the Trustees think fit.~~
- ~~(g) Maintain manage repair improve and develop any property which or an interest in which for the time being forms part of the Trust Fund in such manner as the Trustees shall think fit.~~
- ~~(h) Employ and pay any person (including any Trustee) to do any act of whatever nature relating to the Trust including the receipt and payment of money.~~
- ~~(i) Open an account or accounts at any time or times in any name or names and either on their own behalf or jointly with another at any bank and to overdraw any such account with or~~

~~without giving security and in addition to the powers conferred by section 81 of the Trustee Act 1956 to make arrangements with any Bank for any one or more of the following, namely, the Trustees and/or any delegate or delegates named in writing by all the Trustees to operate upon any account at that Bank. All sums of money received on account of the Trust shall be forthwith paid into the credit of such account or accounts unless otherwise expressly ordered by the Trustees. All negotiable instruments and all receipts for money paid to the Trust shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Trustees from time to time determine.~~

- ~~(j) — Insure against loss or damage by any cause whatsoever any insurable property to any amount not exceeding the full insurable value thereof or the full replacement value thereof as the Trustees may in their absolute discretion from time to time think fit.~~
- ~~(k) — Enter into contracts of any nature whatsoever for the purpose of protecting maintaining or enhancing the value of all or any assets acquired or held by the Trustees or which the Trustees have the right to acquire or hold.~~
- ~~(l) — Delegate any of the powers and duties to any committee or committees consisting of such of the Trustees (or such other persons) as they may appoint for such purpose.~~
- ~~(m) — Subject to the provisions of this Deed, to exercise as the Trustees in their absolute discretion think fit all the voting powers attaching to any Shares forming part of the Trust Fund including to consider any recommendations made by the directors of the Company on any proposal relating to any reconstruction or amalgamation or merger of the Company or any Subsidiary or any modification of the rights of the shareholders or any increase or reduction of capital or other dealing with the Shares and after giving due consideration to the recommendations of the directors to make a decision in respect of any such proposal as the Trustees may consider in their absolute discretion will be for the benefit of or in the interests of the Trust Fund.~~
- ~~(n) — To appoint Directors in the manner provided by the Articles of Association of the Company provided however that the Trustees be satisfied that any person to be so appointed will be a person who has business acumen, sufficient time to devote to the affairs of the Company and the expertise to enable the Company to operate as a successful business.~~
- ~~(o) — To determine whether any money for the purposes of this Deed is to be considered as income or capital and what expenses ought to be paid out of income and capital respectively and also to apportion payments and every such determination or apportionment shall be final and binding on all persons beneficially interested in the Trust Fund and income thereof.~~
- ~~(p) — To determine all questions and matters of doubt which may arise in the course of the trusteeship of this Trust.~~
- ~~(q) — Do such other acts and things as the Trustees may in their absolute discretion consider incidental or conducive to the attainment of the general purposes of the Trust.~~
- ~~(r) — Effect insurance for a Trustee in respect of:~~

- ~~(i) liability, not being criminal liability, for any act or omission in his or her capacity as a trustee of the Trust;~~
- ~~(ii) costs incurred by that Trustee in defending or settling any claim or proceedings relating to any such liability; and~~
- ~~(iii) costs incurred by that Trustee in defending any criminal proceedings in which he or she is acquitted.~~

~~In this clause the expressions:~~

~~"Trustee" includes a former trustee; and~~

~~"Effect insurance" includes paying, whether directly or indirectly, the costs of such insurance.~~

**draft**

Formatted: Header, Tab stops: 7.95 cm, Centered + 15.5 cm, Right

SCHEDULE III  
3

Formatted: Heading 1, Line spacing: single, Tab stops: Not at 7.55 cm

CONSUMER CONSULTATIVE PROCEDURE

Formatted: Font: Verdana, 9.5 pt

In respect of any provision of this Deed which requires the Trustees to Implement a Consumer Consultative Procedure, the Trustees shall:

Formatted: Font: Verdana, 9.5 pt

Formatted: Normal, Line spacing: single

(a) Place notice of the proposal before a meeting of the Trustees;

Formatted: List Paragraph, Indent: Left: 0 cm, Line spacing: single, Outline numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Indent at: 2.2 cm

(b) Give notice of the proposal to Consumers in accordance with clause 11 of the Deed;

Formatted: Font: Verdana, 9.5 pt

(c) In every notice given under paragraph (b) of this schedule, specify a period within which Consumers interested in the proposal may make submissions on the proposal to the Trustees;

Formatted: List Paragraph, Indent: Left: 0 cm, Line spacing: single, Outline numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Indent at: 2.2 cm

Formatted: Font: Verdana, 9.5 pt

(d) Ensure that any Consumer who makes written submissions on the proposal within the period specified in the notice given under paragraph (b) of this schedule is given a reasonable opportunity to be heard by the Trustees;

Formatted: List Paragraph, Indent: Left: 0 cm, Line spacing: single, Outline numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Indent at: 2.2 cm

Formatted: Font: Verdana, 9.5 pt

(e) Ensure that every meeting at which submissions are heard are open to Consumers; and

Formatted: List Paragraph, Indent: Left: 0 cm, Line spacing: single, Outline numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Indent at: 2.2 cm

Formatted: Font: Verdana, 9.5 pt

Formatted: Font: Verdana, 9.5 pt

Formatted: Font: Verdana, 9.5 pt

(f) Make all written submissions on the proposal (excluding address details of the submitters if so determined by the Trustees) available to Consumers.

Formatted: List Paragraph, Indent: Left: 0 cm, Line spacing: single, Outline numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Indent at: 2.2 cm

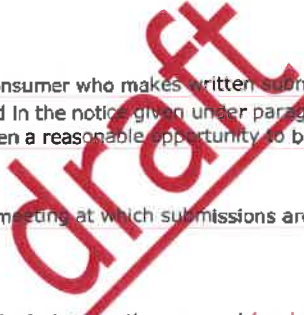
Formatted: List Paragraph, Indent: Left: 0 cm, Line spacing: single, Outline numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.1 cm + Indent at: 2.2 cm

Formatted: Font: Verdana, 9.5 pt

Formatted: Font: Verdana, 9.5 pt

Formatted: Font: Verdana

The period specified pursuant to paragraph (c) above shall be not less than one month and no more than three months.



**SCHEDULE 4**  
**MAP OF DISTRICT**  
[Attached]

**draft**



**SCHEDULE 5****REBATE POLICY****Part 1 - ELIGIBILITY CRITERIA****1 General eligibility**

To be eligible to receive a Rebate, Consumers must meet the following criteria:

**(a) Initial general eligibility**

- (i) To be eligible to receive a Rebate, a person must be a Consumer. A person is a Consumer if the person is named in the records of Trustpower as being liable to pay Trustpower any amount for electrical energy supplied to one or more ICPs situated in the District as at 9am on the Record Date.
- (ii) The number of eligible ICPs (which must, for the avoidance of doubt, be ICPs in the District) for each Consumer will be determined as at 9am on the Record Date and may only increase thereafter by up to five (5) ICPs (but will for the avoidance of doubt decrease if the criteria for eligibility set out in this Rebate Policy in this Deed are not met for any reason).

**(b) Ongoing general eligibility**

- (i) A person who is a Consumer as at 9am on the Record Date shall remain a Consumer (and therefore remain eligible to receive a Rebate in accordance with, and subject to, this Rebate Policy) for such time as the person retains an obligation to pay Trustpower or the Third Party, as the case may be, any amount for electrical energy supplied by Trustpower or that Third Party to the Consumer's ICP or ICPs, as the case may be, subject to the other conditions and criteria set out in Part 1 of this Rebate Policy.
- (ii) The Trustees may review a Consumer's eligibility to receive a Rebate in respect of one or more ICPs if the Trustees reasonably believe that the number of ICPs of that Consumer has been increased by means of an arrangement entered into by or on behalf of that Consumer for a purpose of increasing the aggregate Rebate payments receivable by that Consumer. If the Trustees in their discretion (acting reasonably) consider such an arrangement has been entered into they may make such adjustment to the entitlement of that Consumer to receive Rebates as they deem appropriate.

**2 Eligibility for payments of Rebate Instalments**

- (a) To be eligible to receive a Rebate Instalment in July of each year, a Consumer must have had a power account described in paragraph 1 above for the preceding 1 October to 31 March period.

- (b) To be eligible to receive a Rebate Instalment in December of each year, a Consumer must have had a power account described in paragraph 1 above for the preceding 1 April to 30 September period.
- (c) A Consumer who moves property within the District remains a Consumer and eligible for a Rebate provided that the Consumer reconnects their electrical energy supply at the person's new property with Trustpower or the Third Party (as the case may be) within the District less than 30 days after disconnecting their electrical supply at their previous property.

### 3 Account name changes

If a Consumer changes the name on their Trustpower or Third Party (as the case may be) electrical energy supply account the Consumer shall from that date no longer be eligible for a Rebate and shall cease to be a Consumer.

### 4 Rebate eligibility queries

Consumers have 12 months from the date of the previous distribution to query their entitlement to a Rebate.

### 5 Cessation of, and requalification for, eligibility

Notwithstanding anything to the contrary in this Rebate Policy, a person who previously qualified as a Consumer, but who has ceased to be a Consumer for any reason, shall requalify as a Consumer if that person meets the eligibility criteria in this Rebate Policy within 18 months of the date upon which that person first ceased to be a Consumer. In such circumstances the person shall be entitled to receive future Rebate instalments commencing with the first Rebate instalment payable in July or December (as the case may be) after that person has been a Consumer again for the entirety of the six (6) month period to which such Rebate Instalment relates, as described in paragraph 8 below.

### 6 Eligibility under exceptional circumstances

Without prejudice to the generality of clause 5 of this Rebate Policy above, the Trustees shall consider paying a Rebate to a Consumer deemed ineligible by this Rebate Policy where such Consumer provides evidence of exceptional circumstances affecting the Consumer which resulted in the Consumer from otherwise remaining eligible to receive Rebates. Any such exemption shall be granted in the absolute discretion of the Trustees, and the Trustees' decision in such matters shall be final. When considering an exemption request, Trustees shall consider any precedent being created by this exemption. Evidence to be presented to Trustees must include the following information:

- A written explanation of the request for an exemption from the Consumer outlining the circumstances affecting the Consumer and explaining how those circumstances impacted on the Consumer's otherwise existing eligibility for Rebates.
- Details around the account changes affecting the Consumer including date and name changes if applicable, verified by Trustpower or the Third Party as the case may be.

- TECT management assessment of the circumstances affecting the Consumer and including comment on the extent of any precedent which may be established if the exemption is granted.

## 7 Examples

Examples of the application of the above principles are set out in the table annexed to this Schedule 5.

## Part 2 - PROCEDURES

### 8 Payment method

Consumers will be offered three payment options:

- (a) Rebate paid direct into nominated bank account;
- (b) Rebate credited to electrical energy account; and
- (c) Rebate donated to the Acorn Foundation Vital Impact Fund (or such other charitable fund maintained by the Acorn Foundation, or other charitable entity, as the Trustees may in each case determine in the event that such fund, or such foundation, no longer exists).

Other payment methods (e.g.: cheque or transfer to a third party) are not available.

### 9 Payment Frequency

Rebates shall be paid by semi-annual instalments as follows:

- (a) 50% of each Rebate shall be paid in July, being that portion of the Rebate applicable to the preceding 1 October to 31 March period; and
- (b) 50% of each Rebate shall be paid in December, being that portion of the Rebate applicable to the preceding 1 April to 30 September period,

with such adjustment as the Trustees determine necessary or appropriate with respect to the annual period to 31 December 2021.

### 10 Tax Implications

#### (a) Tax status of payment

The intention of the Trustees is that Rebates shall, to the extent possible, be paid from the capital of the Trust or from tax paid income and therefore for most beneficiaries should not be subject to further income tax or need to be included in most Consumers' tax returns. Consumers however will need to satisfy themselves of the tax status of Rebates based on their own circumstances and changes in law from time to time.

(b) Rates Rebates/Work & Income

The intention of the Trustees is that Rebates shall will not need to be declared by Consumers as Income when applying for a Council Rates Rebate or when applying for assistance through Work and Income, however Trustees can make no representations to Consumers in this regard and Consumers will need to satisfy themselves of their obligations points from time to time. The Trustees may from time to time publish their understanding of the law in this respect to assist Consumers.

**11 Early Release of Rebates**

Consumers may not receive a Rebate any earlier than the bulk processing date of that Rebate.

**12 Recovering costs associated with the Rebate distribution**

TECT may, from time to time charge Consumers for requests to provide information on prior Rebate payments, where there is considerable staff time and/or cost involved in doing so (as determined by the Trustees). TECT may charge up to the following levels:

- Information requested in respect of the previous two years shall incur no charge.
- Information requested in respect of the past five years shall incur a charge of \$100 per information request.
- Information requested in respect of the past 10 years shall incur a charge of \$150 per information request.
- Information requested in respect of any earlier period shall incur a charge of \$200 per information request.

**13 Rejected direct credits**

TECT will request the relevant registrar to advise Trustpower or the Third Party (as the case may be) and TECT of any rejected direct credits and to forward the dollar value of these to Trustpower or the Third Party (as the case may be) for crediting to the electrical energy account of the relevant Consumer.

**14 Missing Direct Credits**

Where a Consumer cannot see the credit appear in the Consumer's nominated bank account and that Consumer notifies TECT of this, TECT will request the relevant registrar to request a payment trace with the applicable bank.

Process: The Consumer will be advised of the outcome. Where the applicable bank advises the funds have been credited to an account not owned by the Consumer, TECT may request the relevant registrar to pay the Consumer the Consumer's Rebate amount as soon as practicable and seek reimbursement from the bank concerned.

**15. Missing credits to accounts**

Credits to electrical energy accounts may take two billing cycles to appear on such accounts.

**16. Rebates returned as a donation to TECT**

Any Rebates returned to TECT to be used for charitable purposes will be deposited into TECT's fund with the Acorn Foundation (or such other charitable entity established for similar purposes as the Trustees may determine in the event that the Acorn Foundation no longer exists).

**draft**

**Annex to Schedule 5: Rebate Policy Eligibility Criteria Examples**

**REBATE POLICY**

**Description of entities and eligibility where account name changes.**

**1. Businesses, Trusts, Companies and Trading Names**

TYPE	DESCRIPTION	EXAMPLES OF ACCOUNT NAME CHANGES
A. Sole Trader	Business which is not a separate legal entity from owner. Individual is responsible for all taxes and debts. Business income taxed at individual tax rates. Personal assets (e.g. home) may be at risk if business debts can't be repaid.	<p>i. <i>WhizzyDo Administrative Services</i> changes account to <i>Pip Mills - Eligible</i> as evidence exists that <b>Pip was financially liable for both accounts</b></p> <p>ii. <i>WhizzyDo Administrative Services</i> changes account to <i>Pip Mills &amp; Paul Wells - Eligible</i> as <b>Pip's name is on both accounts. If subsequently Pip and Paul split, Paul cannot be eligible under an account opened in his own name, whereas Pip can as her name was on the original account at Record Date.</b></p>
B. Partnership	Two or more people run a business together, share assets/liabilities. No formal register. Unlimited liability business agreement between partners rather than a business that is a separate legal entity. Partners are liable for debts incurred by other partners in connection with the business. Individual assets may be at risk. Partnership agreement typically outlines the partnership share (eg. 50/50). Partners include their share of profit/loss in individual tax return and satisfy own tax liability.	<p>i. <i>Sunshine Partnership</i> changes account to <i>Kelly Wells &amp; Pete Hargrave</i>. Partnership agreement shows <b>Kelly Wells &amp; Pete Hargrave as 50/50 partners of Sunshine Partnership - Eligible</b></p> <p>ii. <i>Sunshine Partnership</i> changes account to <i>Kelly Wells</i>. Partnership agreement shows <b>Kelly Wells &amp; Pete Hargrave as 50/50 partners of Sunshine Partnership - Not Eligible</b></p> <p>iii. <i>Kelly Wells &amp; Pete Hargrave Partnership</i> changes account to <i>Kelly Wells &amp; Pete Hargrave</i>. Partnership agreement shows <b>Kelly Wells &amp; Pete Hargrave as 50/50 partners of Kelly Wells &amp; Pete Hargrave Partnership - Eligible</b></p>

Formatted: Header, Tab stops: 7.95 cm, Centered + 15.5 cm, Right

Formatted: Left: 2 cm, Right: 3 cm, Top: 2.5 cm, Bottom: 3 cm, Do not suppress endnotes, Width: 29.7 cm, Height: 21 cm, Header distance from edge: 1.7 cm, Footer distance from edge: 1 cm

Formatted: Footer

<p><u>C. Company</u></p>	<p>Separate legal entity from individual shareholders. Registered with the Companies Office, shareholders hold the ownership interests in the company and have a financial interest in its business. Shareholders' liability is limited to the capital contributed (or if shares are not paid up, liable to be contributed) for their shares (i.e. for a limited liability company (Ltd)). Income tax ordinarily paid by the company and post tax profits distributed to shareholders, shareholders may have additional tax liability (paid by withholding at company level) if their personal tax rate is higher than the company tax rate.</p>	<p>i. <u>Sunshine Sheds Ltd</u> changes account name to <u>James Darwin - Not Eligible</u> as these are separate legal entities ii. <u>Suzie Goldsmith Hair Design Ltd</u> changes account name to <u>Suzie Goldsmith - Not Eligible</u> as these are separate legal entities iii. <u>Sunshine Sheds Ltd</u> changes company name to <u>Sunshine Sheds &amp; Awnings Ltd</u> but remains same company (same company number). <b>- Eligible</b> iv. <u>Sunshine Sheds &amp; Awnings Ltd</u> changes name to <u>Sunshine Sheds Ltd</u> (existing Consumer) but is a separate company (different Company number). <b>Not Eligible</b></p>
<p><u>D. Trading Trust</u> <u>Family Trust</u></p>	<p>Business trading as a trust. Trustees have the power to carry on the business of the trust and hold investments. Current income distributed to beneficiaries is taxed at beneficiaries' marginal tax rates; income not distributed is taxed at trustee's tax rate. Tax losses can be carried forward by trustees but cannot be passed on to beneficiaries.</p>	<p>i. <u>The Craig Family Trust</u> changes account name to <u>Bill Craig - Not Eligible</u> ii. <u>The Craig Family Trust</u> changes account name to <u>Felicity &amp; John Craig</u> but is <u>Eligible</u> as these are separate legal entities iii. <u>Felicity &amp; John Craig</u> changes account to <u>The Craig Family Trust - Not Eligible</u> as these are separate legal entities. iv. <u>John Craig</u> resigns as Trustee on <u>The Craig Family Trust</u>. <u>Bill Craig</u> becomes a Trustee. <u>The Craig Family Trust</u> is still eligible.</p>
<p><u>E. Other/Trading Name</u></p>	<p>Non-entities - Orchards / lifestyle blocks etc where owners make up an identifying name for their property.</p>	<p>i. <u>Willow Creek</u> is the name on the account for the water bore/pump which services 3 properties on Willow Creek Lane. The water bore/pump is on Susan Daily's property and she owns the power account. The other two property owners pay Susan 1/3 of each month's power bill. Susan moves house and closes the water bore/pump power account. Peter Smythe moves into Susan's property and opens a new account for the water bore/pump under the name <u>Willow Creek</u>. <b>Not</b></p>

		<p><b>Eligible. The other two neighbours are also not eligible</b> as they were not named on the account.</p> <p>ii. <u>Willow Creek</u> changes account to <u>Susan Daily</u> – <b>Eligible if evidence exists that Susan was financially liable for both accounts.</b></p>
--	--	--

**2. Individual, Couple & Flatting Accounts**

TYPE	DESCRIPTION	EXAMPLES OF ACCOUNT NAME CHANGES
<p>A. Individuals, (Individual people, couples and flatmates are named on a power account for a property)</p>	<ul style="list-style-type: none"> <li>Joint Account to Individual accounts</li> </ul>	<p>i. <u>Scott Smith</u> &amp; <u>Carina Jones</u> changes account name to <u>Scott &amp; Carina Smith</u> after getting married – <b>Eligible</b></p> <p>ii. <u>Mr Scott &amp; Mrs Carina Smith</u> changes account to <u>Carina Jones</u> (Maiden Name) – <b>Eligible</b> as Carina's name was on original accounts (need to provide marriage cert to show married/maiden names)</p> <p>iii. <u>Karen &amp; John Brown</u> closes joint account and either <u>Karen Brown</u> or <u>John Brown</u> opens a new account in their individual name – <b>Eligible</b> as their names were both on the original joint account at Record Date</p> <p>v. <u>Bruce Arnott</u> changes account to <u>Bruce Arnott &amp; Sharon Kingi</u> – <b>Eligible</b> as Bruce's name is on both accounts so he provides continuance. If subsequently <u>Bruce &amp; Sharon</u> split, <u>Sharon</u> cannot be eligible under another account opened in her name as her name wasn't on the account at Record Date.</p>
	<ul style="list-style-type: none"> <li>Individual Account to Joint Account</li> </ul>	



	<ul style="list-style-type: none"> <li>• <u>Flat Accounts</u></li> </ul>	<p>i. <u>Sam Lee, Jason Brown &amp; Sally Field changes account to Sam Lee, Sally Field &amp; Carl Harrison – Eligible as Sam and Sally's names were both on the original account.</u></p> <p>ii. <u>After above change - if Jason Brown opens a new account in his name – Eligible as his name was on the account that was eligible at Record Date.</u></p> <p>iii. <u>If Carl Harrison subsequently takes his name off the account with Sam Lee and Sally Field, and opens his own account he cannot be eligible for that new account as his name wasn't on the original account at Record Date.</u></p> <p>v. <u>If Jason Brown opens a new account in the name of Mr Jason Brown &amp; Mrs Grace Collier – Eligible. If subsequently Jason &amp; Grace split Grace cannot be eligible under another account opened in her name as her name wasn't on the original account at Record Date.</u></p>
<ul style="list-style-type: none"> <li>• <u>Change of name on account</u></li> </ul>		<p>i. <u>Mr Frank Smythe changes account name to Mrs Jane Smythe after Frank's death. Eligible (if death cert shows Jane Smythe as surviving spouse). If Jane Smythe is daughter or daughter in law - Not Eligible as eligibility cannot be passed to child or child-in-law, as child has no financial obligation for parents' debt.</u></p> <p>ii. <u>Mr Frank Smythe changes account name to Mrs Jane Smythe – Not Eligible as Mrs Jane Smythe was not name on original account.</u></p> <p>iii. <u>James Tasker changes name on account to Kelly Tasker (Daughter) – Not Eligible as child has no financial obligation for parent's debt.</u></p> <p>v. <u>Karen &amp; John Leach (joint account). John &amp; Karen split and John moves out but joint account remains active. John moves into another property and opens a new account in just his name – Not Eligible as original account under which John is eligible remains an active account. Original account remains Eligible</u></p>

<p><u>B. Change in number of ICP's</u></p>	<ul style="list-style-type: none"> <li>• <u>Additional ICP's can be made eligible after Record Date (up to a maximum of five (5) per eligible Consumer)</u></li> </ul>	<p>i. <u>Richard &amp; Donna Friend have an account at 410 No1. Road, Te Puke which has two ICP's and receive a Rebate for each ICP. They move to 31 Boucher Ave, Te Puke which has only one ICP. In future they will only receive 1 Rebate but are still eligible for a Rebates on an additional five (5) ICPs (their original two (2) ICPs and a maximum of five (5) additional ICP's).</u></p> <p>ii. <u>Richard &amp; Donna Friend have an account at 31 Boucher Ave, Te Puke which has only one ICP for which they receive a Rebate. They move to 410 No1. Road, Te Puke which has two ICP's - one for the dwelling and one for the shed. They will receive two (2) Rebates.</u></p> <p>iii. <u>Richard &amp; Donna Friend have an account at 410 No1. Road, Te Puke which has two ICP's and receive a Rebate for each ICP. They move to 31 Boucher Ave, Te Puke which has two ICP's. They continue to receive two (2) Rebates.</u></p> <p>iv. <u>Richard &amp; Donna Friend have an account at 410 No1. Road, Te Puke which has one ICP. They move to 671 Te Matai Road, Te Puke which has two ICP's. They will receive six (6) Rebates only (on plus an additional five (5)).</u></p> <p>v. <u>Richard &amp; Donna Friend have an account at 410 No1. Road, Te Puke which has one ICP and receive a Rebate for that ICP. They acquire a bach in Tav Street which they add to their existing account. In future they will receive two (2) Rebates but are still eligible for a Rebate on an additional four (4) ICPs (i.e. up to six (6) ICPs).</u></p>
<p><u>C. Closure of account</u></p>	<ul style="list-style-type: none"> <li>• <u>Closes own account, but pays for another</u></li> </ul>	<p>i. <u>Camilla Gregory closes her account when she moves out of her flat and house sits for Shane &amp; Stephanie Scott while they are away, agreeing to pay their power account for that period. Camilla Gregory - <b>Not Eligible</b> unless she reopens an account in her name.</u></p> <p>ii. <u>Shane &amp; Stephanie Scott - <b>Eligible</b> as their names remain on their account regardless of who is paying for it (they remain financially liable).</u></p>



# TAB 15





## TECT Consumer Trust

A description of the key proposed variations to the existing deed of trust, on a clause by clause basis

Clause of proposed deed	Description of key changes
Parties to the deed	The trust was originally settled by the original Trustpower entity (the predecessor to the existing Trustpower). This is a matter of historical record and can be removed now as it is not necessary to state this on the front of the deed. Likewise the names of the original Trustees are no longer relevant and can be removed.
Background recitals (the "Whereas" provisions)	The recitals originally described the settling of the trust by the original Trustpower pursuant to the Establishment Plan in 1993. This is also a matter of historical record and can be shortened. The recitals have been updated to do that and to refer to the more recent history of the Trust and the creation of the existing Trustpower entity in 2016.
Clause 1: Definitions and construction	<p>A number of definitions have been updated and redundant ones no longer needed have been removed. Key changes are:</p> <p><u>Chief Executive</u>: This role was not referred to in the original deed but has been added as various tasks have been given to the Chief Executive in the amended deed, in relation to the proceedings of meetings of the Trustees (see clauses 5, 7 and 8 of Schedule 2).</p> <p><u>Code of Conduct</u>: This is no longer needed in this amended deed as the Trustees of the Trust will be the Trustees appointed from time to time under the TECT Community Trust, and that trust deed will contain its own rules for the election and appointment of the trustees.</p> <p><u>Code of Practice</u>: This is no longer needed as the practices of trust administration have developed over the decades since the trust was established and the Trustees will be regulated more clearly by the new Trusts Act 2019. Reflecting that new Act, the amended deed sets out Trustee duties clearly (see Schedule 1).</p> <p><u>Consumer</u>: This has been substantially amended given the purpose of these amendments. See comments below regarding clause 4.2 of the Trust Deed which regulates the identity of the Consumer group.</p> <p><u>Consumer Consultative Procedure</u>: This is mostly unchanged and now located at Schedule 3. Paragraph (f) has been</p>

	<p>changed to permit Trustees to withhold address details of submitters to protect their privacy.</p> <p><u>Directors, Dividends, Other Securities, Securities and Shares:</u> These definitions have all been deleted as they related specifically to the relationship between the Trust and Trustpower. The majority of the Trust’s assets are no longer represented by Trustpower shares and many of these provisions (to which the definitions related) will essentially be redundant if the restructuring proceeds, so have been removed.</p> <p><u>District:</u> this remains a key concept and has been updated to refer to a map which is attached as Schedule 4.</p> <p><u>Effective Date:</u> This is the date of amendment of the Trust Deed.</p> <p><u>Independent Returning Officer:</u> This is no longer needed in this amended deed as the Trustees of the Trust will be the Trustees appointed from time to time under the TECT Community Trust.</p> <p><u>Termination Date:</u> This refers to the final winding up of the Trust. The Trust is expected to continue until the end of 2050, but may be wound up earlier if there is Insufficient funds remaining to pay Rebates or if a Consumer Consultative Procedure has been followed in accordance with clause 12.2.</p>
<p>Clause 2: Name of the Trust</p>	<p>The name of the Trust has been modernised to the TECT Consumer Trust, reflecting the name by which it has become known and retaining its focus on the consumers.</p>
<p>Clause 3: Declaration of Trust</p>	<p>This clause has been updated to reflect the present amendments to the Trust Deed but these changes are not material.</p>
<p>Clause 4: Purpose of the Trust and principal meaning of Consumers</p>	<p>Clause 4 is in two parts. The first part, clause 4.1, retains the concept from the original Trust Deed of the Trust existing for the benefit of Consumers, but it has been modernised and simplified.</p> <p>Clause 4.2 then go on to describe who Consumers are:</p> <ul style="list-style-type: none"> <li>• Clause 4.2 provides that a Consumer is a customer of Trustpower on 28 January 2021, being the date the strategic review of its retail consumer business was announced by Trustpower, for such time as that person remains a customer of Trustpower or a third party that may acquire Trustpower’s business of supplying electricity and otherwise satisfies the Eligibility Criteria contained in the Trust’s Rebate Policy. That Rebate Policy is now attached as Schedule 5 of the Trust Deed.</li> </ul>

	<ul style="list-style-type: none"> <li>Clause 4.3 provides that those Consumers will continue to be Consumers (and therefore be entitled to Rebates) if another party subsequently buys what was originally Trustpower's electricity supply business or merges into the entity to which Trustpower sold that business.</li> </ul>
<p>Clause 5: Trusts of Income and Capital until Termination Date</p>	<p>Clause 5 now reflects clause 5 and 6 of the existing Trust Deed. Those clauses have been simplified and modernised. Clause 5 now provides for the payment of an annual rebate of \$500 to each Consumer, in accordance with the Procedure set out in Part 2 of Schedule 5 (Rebate Policy).</p> <p>The concept of provision of indirect benefits to Consumers has been removed, as provision of such benefits to the wider community will be the role of the new TECT Community Trust, while the only purpose of the TECT Consumer Trust will be to pay Rebates to Consumers.</p>
<p>Clause 6: Trusts of Income and Capital on the Termination Date</p>	<p>Clause 6 has also been simplified. The clause provides that on the Termination Date (see clause 1.1 above for a description of the Termination Date definition), the Trustees are to distribute whatever is left in the trust fund to the Trustees of the TECT Community Trust. The clause corresponds to clause 6.2 of the existing Trust Deed.</p>
<p>Clause 7: Appointment, retirement and proceedings of Trustees</p>	<p>This clause (which corresponds to clause 7 of the existing Trust Deed) provides that the rules in Schedule 2 govern the appointment and retirement of Trustees, and the proceedings of meetings of Trustees. This is similar to the existing Trust Deed, except that the rules set out in the Schedule have been simplified and modernised:</p> <ul style="list-style-type: none"> <li>In particular, clauses 1 and 2 of Schedule 2 provide that the Trustees will be the same persons who are elected or appointed as the Trustees of the TECT Community Trust. This has enabled the previously detailed rules around appointment and election of Trustees to be removed (those provisions are included in the trust deed of the new TECT Community Trust).</li> <li>The remaining clauses of Schedule 2 address procedural matters such as the regulation of Trustee meetings. These have been modernised and simplified but are not materially different in substance from the existing provisions of the Trust Deed regulating the meetings of Trustees.</li> </ul>
<p>Clause 8: Trustees' powers</p>	<p>Clause 8 corresponds to clauses 8 and 9 of the existing Trust Deed. The clause has been modernised to reflect the new Trusts Act 2019 (which came into force in January 2021). That new Act confirms that trustees of trusts have the same wide powers as a natural person when it comes to ownership and management of trust assets, ensuring that they can manage the trust assets effectively. Clause 8.1 reflects this. Clause 8.2 specifically confirms that the Trustees have the</p>



	<p>power to loan the funds comprising the trust fund to the TECT Community Trust (which will invest the funds and pay an interest rate return to the TECT Consumer Trust).</p> <p>The restrictions in clause 9 of the existing Trust Deed relating to the continued ownership of Shares in Trustpower have been removed from the amended deed. The restrictions will not be necessary or appropriate if the proposed restructuring is undertaken as TECT's shareholding in Trustpower would be settled into the new TECT Community Trust, following the undertaking of the Consumer Consultative Procedure as contemplated by clause 9.</p>
<p><b>Clause 9: Duties of Trustees</b></p>	<p>Clause 9 (which corresponds to clause 10 of the existing Trust Deed) has been updated to reflect the provisions of the new Trusts Act, which sets out mandatory and default duties applicable to trustees:</p> <ul style="list-style-type: none"> <li>• Clause 9.1 in particular reflects this and provides that the Trustees are subject to the duties set out in Schedule 1.</li> <li>• Clause 9.2 to clause 9.8 reflect the provisions of the existing Trust Deed but have been modernised and simplified. The Trustees must continue to prepare financial statements and make these available to Consumers (clauses 9.2 to 9.3), and keep confidential information safe (clause 9.8). They must also continue to arrange a general meeting of Consumers, at which the auditor is appointed (clause 9.4 to 9.6). These provisions have not been materially changed in substance from the existing Trust Deed.</li> </ul>
<p><b>Clause 10: Information to Consumers</b></p>	<p>Certain modernisation or consequential amendments have been made (for example, now refers to information being made available on the Trust's website) but this clause is materially the same as clause 11 of the existing Trust Deed.</p>
<p><b>Clause 11: Remuneration of Trustees</b></p>	<p>The Trustees will not be entitled to be remunerated for their services as trustees of the TECT Consumer Trust, under clause 11 of the deed as amended (corresponding to clause 12 of the existing trust Deed). The trustees of the TECT Consumer Trust will be the same as those of the TECT Community Trust and the trustees may be remunerated for their services under the Community Trust. Clause 11 does permit the Trustees of the TECT Consumer Trust to be reimbursed for their expenses.</p>
<p><b>Clause 12: Variation of trust deed</b></p>	<p>This clause (corresponding to clause 13 of the existing Trust Deed) has been amended to increase the number of clauses and important terms in the deed which cannot be amended by the Trustees without first undertaking a Consumer Consultative Procedure, to protect the interests of Consumers and reflect that the Trustees will have less discretions in</p>

	managing the Trust Fund following the proposed restructuring.
<b>Clause 13:</b> Winding up of Trust	As noted above, the Trust is expected to continue until the end of 2050. However the Trustees may wind the Trust up earlier if they believe that the Trust Fund is not sufficient to enable the Rebate payment, or if they have followed a Consumer Consultative Procedure. This clause reflects this updated arrangement, and can be compared to clause 14 of the existing Trust Deed.
<b>Clause 14:</b> Liability and Indemnity	The Liability and Indemnity clauses from the existing Trust Deed (clauses 15 and 16), addressing when Trustees are liable for losses caused and when they are entitled to an indemnity out of the assets of the Trust, have been modernised in light of the new Trusts Act and combined. Substantively though the clauses are materially similar to those in the existing Trust Deed. A key provision of the new Trusts Act, which is reflected in these new provisions, is that Trustees may not be indemnified by the Trust if they are grossly negligent (refer clause 14.2).
<b>Clause 15:</b> Notices	This clause is not changed in substance from clause 17 of the existing Trust Deed. Certain modernisation / consequential amendments have been made (for example, the clause now refers to notice being duly given or made by email).

### Schedules

<b>Schedule 1:</b> Trustees Duties	Refer comment at clause 9 above.
<b>Schedule 2:</b> Appointment, retirement and proceedings of Trustees	Refer comment at clause 7 above.
<b>Schedule 3:</b> Consumer Consultative Procedure	Refer comment at clause 1.1 above.
<b>Schedule 4:</b> Map of District	Refer comment at clause 1.1 above
<b>Schedule 5:</b> Rebate Policy	Refer to comment at clause 5 above.

15 February 2021



## TAB 16





Better together.

18 February 2021

Bill Holland  
Chair  
TECT  
The Kollektive  
DX Box HP40007  
Tauranga 3112

Trustpower Limited  
Head Office  
108 Durham Street  
Tauranga

Postal Address:  
Private Bag 12023  
Tauranga Mail Centre  
Tauranga 3143

F 0800 32 93 02

Offices in  
Auckland  
Wellington  
Christchurch  
Dunedin

Freephone  
0800 87 87 87

[trustpower.co.nz](http://trustpower.co.nz)

Dear Bill

Thank you for engaging in recent discussions relating to Trustpower's decision to undertake a strategic review of its retail business. Given that TECT's beneficiaries are our customers in the Tauranga/Western Bay of Plenty region, it was important that TECT was briefed on this matter in confidence in order to allow it time to consider the implications for the Trust.

Both Trustpower and TECT share a common goal of seeking the best possible outcome for our customers.

We understand that TECT's intention is to consult with its beneficiaries on TECT's draft proposal that you recently shared with us. We have considered the reform process set out in that draft proposal, which includes community consultation and an application to the High Court, and consider that process to be right and robust.

Trustpower supports TECT's proposal because it substantially protects the rights of existing beneficiaries to continue to receive TECT rebate payments at current levels until 2050, irrespective of the outcome of the strategic review.

We will keep you informed of process as we undertake the strategic review.

Kind regards

A handwritten signature in black ink, appearing to read "P. Ridley-Smith". The signature is written in a cursive, somewhat stylized script.

Paul Ridley-Smith  
Chair



## TAB 17





18 February 2021

Dear TECT beneficiary

## TRUSTPOWER IS CHANGING, SO TECT MUST CHANGE TOO.

### 5 things you need to know:

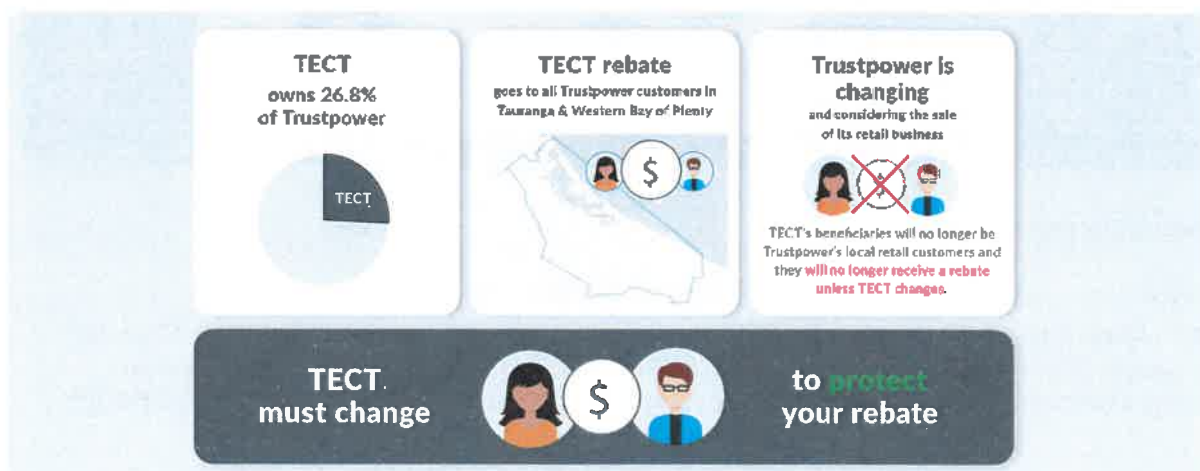
1. Trustpower is undertaking a strategic review of its Retail Business that includes a potential sale. This means that TECT also needs to review its structure and any changes required to it.
2. If a sale does take place, unless TECT changes its structure, the status of you - its beneficiaries - will be under threat.
3. The TECT rebate is protected under the proposed new structure for approximately 30 years. Based on current financial projections you will continue to receive it until the end of 2050.
4. As a beneficiary of TECT you do not need to do anything further.
5. If you'd like to know more, read on or go to [www.tect.org.nz](http://www.tect.org.nz)

### What is happening and why is TECT putting forward this proposal?

We know that many of you will be wondering why TECT is again considering changes to its structure. The simple answer is because we have to.

Trustpower's decision to conduct a strategic review and potentially sell its Retail Business means that TECT must also consider changes to its structure and the way it operates.

This is because a sale of Trustpower's Retail Business to a third party means that, under the TECT Trust Deed, TECT's beneficiaries will no longer be you - Trustpower's local retail customers. This means that you would no longer be entitled to receive a rebate.



The infographic is divided into three main sections. The first section, titled 'TECT owns 26.8% of Trustpower', features a pie chart with a small slice labeled 'TECT'. The second section, titled 'TECT rebate goes to all Trustpower customers in Tauranga & Western Bay of Plenty', shows a map of the region with icons of a woman and a man and a dollar sign. The third section, titled 'Trustpower is changing and considering the sale of its retail business', shows icons of a woman and a man with a red 'X' over them, and text stating 'TECT's beneficiaries will no longer be Trustpower's local retail customers and they will no longer receive a rebate unless TECT changes.' Below these sections is a dark grey banner with the text 'TECT must change' on the left, icons of a woman, a dollar sign, and a man in the center, and 'to protect your rebate' on the right.

Instead, the beneficiaries after a sale would be only a small number of larger commercial and industrial electricity users in the Tauranga and Western Bay of Plenty region who will remain customers of the Trustpower Generation business if the Retail Business is sold.

As such, if and when a sale occurs TECT will not be able to fulfil its purpose, which is to benefit the broad base of electricity customers of Trustpower in Tauranga and the Western Bay District.

In practice, this means that the Trustees will not be able to distribute rebates to local retail customers and TECT will effectively be frozen. The direct TECT rebate to you will stop.

Even if the current strategic review by Trustpower does not lead to a sale in the short term, it demonstrates the ongoing uncertainty of the ownership of the Retail Business and the Trustees believe that the structure of TECT needs to change to future-proof the Trust and the rebate.

Following Trustpower's announcement, the Trustees are therefore required to act now to consider updating the structure of TECT in order to meet their obligations under the TECT Trust Deed. The Trustees note that they wish to proceed with a restructure of TECT irrespective of whether Trustpower is ultimately successful in selling the Retail Business.

We are now seeking your views on this proposed new structure for TECT.

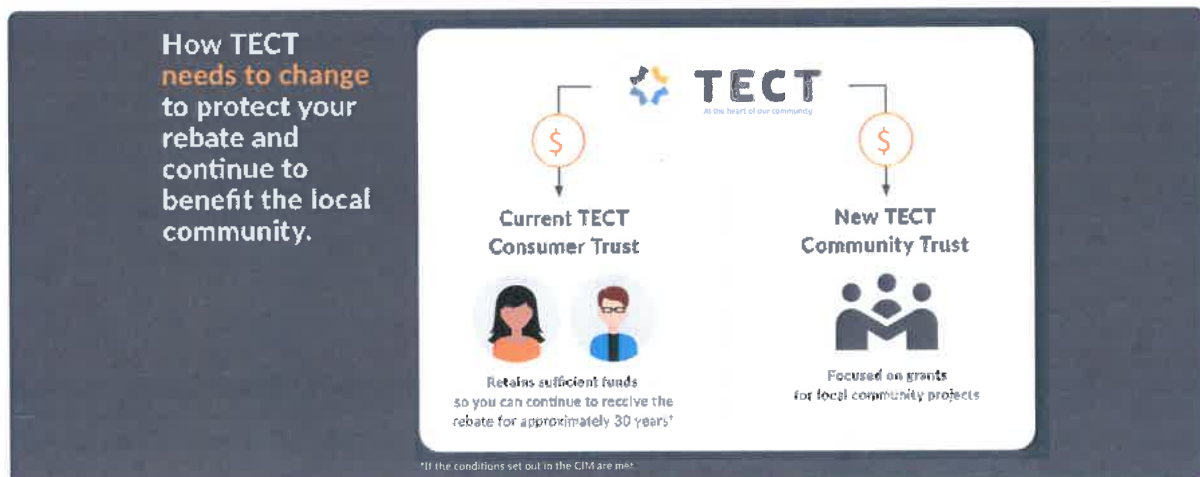
### How is TECT changing?

In considering options for a new structure for TECT and the transition to it, the Trustees have been guided by four key principles:

1. **TECT's purpose** – the purpose and intent for which TECT was created.
2. **Maintaining TECT's capital** – so that a trust can continue for future generations.
3. **Legal obligations and Trustee duties** – doing nothing is not an option.
4. **Fairness** – current beneficiaries and future generations all benefit.

We also heard your feedback in 2018 loud and clear and know how important the TECT rebate is to you.

The proposal therefore ensures that the rebate will continue to be paid for approximately 30 years, to every existing retail customer who remains an electricity customer of Trustpower or a buyer of Trustpower's Retail Business.



The steps for change include:

#### Step 1:

TECT would retain funds which are sufficient to pay a yearly rebate to all existing beneficiaries (as of Thursday 28 January 2021) for approximately 30 years (i.e., the intention is to retain enough funds to pay, based on current financial projections, rebates until 31 December 2050). The amount and structure of that retention has

been developed using independent customer information from Trustpower to determine an appropriate churn assumption, and financial modelling from KPMG. The range is in the order of \$291 million to \$413 million. The Trustees have yet to finalise the retention, but intend to focus towards the high end of the range.

An existing beneficiary is essentially a customer of Trustpower in the defined Tauranga and Western Bay of Plenty District who currently is eligible to receive a rebate.

- The rebate will be \$500 a year for the first ten years, will increase to \$600 in 2030 and increase further to \$700 in 2040, to take account of inflation. \$500 was the averaged median rebate payment over the five previous years.
- Rebates will be paid on the usual six monthly TECT cycle.
- To receive a rebate a beneficiary must remain a customer of Trustpower or the buyer of the Retail Business (or a subsequent buyer), in the district - subject to limited exceptions. If you leave, the rebate stops<sup>1</sup>.
- New customers and the current customers of the new business do not become beneficiaries.
- At 31 December 2050, TECT must be wound up (if it has not been wound up earlier for example, due to the trust fund all having been paid out as rebates), and its remaining assets will go to the new TECT Community Trust described below.

There is no guarantee that rebates will be paid out until the end of 2050, but that is the current projection based on financial modelling. If the trust fund has been paid out in full earlier, TECT will be wound up and rebates will end.

The changes will be implemented by changing the TECT Trust Deed as summarised in the Consumer Information Memorandum dated 18 February 2021, such as changes to the definition of Consumer, the distribution clauses to lock in the rebates, the removal of the restrictions on selling Trustpower Shares, the provisions regarding trustees and the provisions about winding up.

## Step 2:

The balance of TECT's funds (including its shareholding in Trustpower) would be transferred to a new long-term community trust focused on grants for local community projects.

## Why is TECT proposing to change this way?

The decision by Trustpower to conduct a strategic review and potentially sell its Retail Business means the Trustees must act now to futureproof the structure of TECT and protect the rebate for existing beneficiaries.

The proposed new structure will also resolve several important issues with the existing structure that have developed in recent years and pose ongoing risks to TECT.

1. **A shrinking beneficiary base** – when TECT was formed in 1993, 100% of electricity consumers in the Tauranga and Western Bay of Plenty region were beneficiaries. Today it's around 59% and decreasing by the day as more consumers choose to move to other electricity providers.
2. **Structural issues** – concern has been expressed previously about matters such as the relationship between the TECT rebate and Trustpower and there is a risk that this could be raised again.
3. **Trust law changes** – Trustees need to balance current and future beneficiaries, and to provide in effect intergenerational benefits. The new Trusts Act, which came into force in January 2021, changes TECT so that it has a total life of 125 years, placing more emphasis on future beneficiaries.

The changes to TECT's structure we are proposing will help resolve all these challenges and make sure that Trustees are meeting their obligation to maximise the benefit of the Trust for all beneficiaries.

## What can't we do?

In considering options for the future of TECT, the Trustees have also carefully considered and ruled out the following:

1. **Stop Trustpower selling the Retail Business** – TECT is a minority shareholder in Trustpower with only a 26.8% stake and therefore could not stop Trustpower from undertaking any proposed sale of the Retail Business.

<sup>1</sup> Some exemptions apply. See the Consumer Information Memorandum for more information.

2. **Continue with the status quo** – any potential sale of the Trustpower Retail Business would mean that only those customers of the remaining Trustpower generation business (commercial and industrial customers) would be beneficiaries of TECT. The previous retail customers would no longer be beneficiaries. This is unfair, which is why it is proposed that rebates continue for those who were beneficiaries on Thursday 28 January 2021. In addition, the other issues with the structure noted above would become even more pronounced.
3. **TECT remains unchanged and simply makes the customers of the new company the beneficiaries of TECT** – this would be against the scheme and purpose of TECT, as at that point TECT would not own any shares in the new company.
4. **Wind up TECT and pay out beneficiaries** – winding up TECT would be against the scheme and purpose of TECT.

### What now?

The strategic review and potential sale of Trustpower’s Retail Business means that TECT must act to safeguard its future - we have no choice.

As Trustees, we believe that the new structure set out for TECT in this Consumer Information Memorandum will ensure the success of TECT for the Tauranga and Western Bay community for current and future generations, while protecting the rebate for existing beneficiaries for approximately 30 years.

We are particularly excited about the ability the proposed new structure will deliver to TECT in the future to fund more community projects, like the local rescue helicopter service and St John’s, which serve and benefit everyone in our community.

We urge you to read the Consumer Information Memorandum carefully, to visit [www.tect.org.nz](http://www.tect.org.nz) for more information, and to come along to the consumer information sessions being held over the next month. You have the ability to make a submission in writing, and you will also have the opportunity to talk to your submission should you wish to.

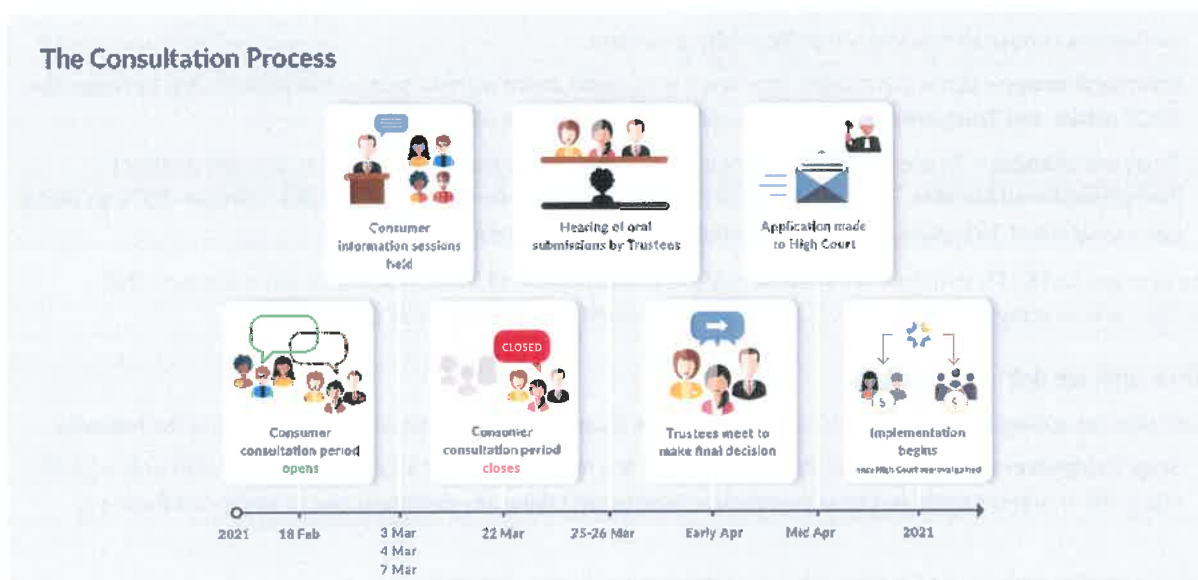
Once the public consultation process is complete, Trustees will make a decision on how to proceed.

As a final independent step, any changes the Trustees then propose will be reviewed by the High Court which will be asked to endorse the proposal and process. Consumers will be given an opportunity to make submissions to the High Court if they wish.

Please see the Consumer Information Memorandum for further important information.

Yours sincerely,

The Trustees of TECT



## Formal Notice of Proposal

This document is a formal notice of proposal under the TECT Trust Deed.

Notice is hereby given by the Trustees of TECT in accordance with clause 11 of the TECT Trust Deed dated 21 December 1993 (as amended from time to time) to all of its Consumer beneficiaries of the proposal set out in this notice.

The following proposal is required to be disclosed pursuant to the Consumer Consultative Procedure set out in Schedule III to the TECT Trust Deed and therefore this Notice of Proposal is being given for that purpose.

**The Trustees propose the following:**

*"That TECT restructures in the manner set out in the Notice of Proposal dated 18 February 2021 and as referred to in the Consumer Information Memorandum dated 18 February 2021, including by amending the TECT Trust Deed, establishing the TECT Community Trust, causing TECT's indirectly held shares in Trustpower to be transferred into that new trust, and making the distributions and rebate payments referred to in those documents."*

TECT beneficiaries who would like to give feedback on the proposal are invited to make a written submission by **4pm 22 March 2021**. Please see the TECT Beneficiary Feedback Form available for download at [www.tect.org.nz](http://www.tect.org.nz).

### Consumer Information Sessions

For more information visit [www.tect.org.nz](http://www.tect.org.nz) or join us at one of the below information sessions.

WED  
3  
MARCH

6.30pm  
Club Mount Maunganui,  
45 Kawaka Street,  
Mount Maunganui.

THUR  
4  
MARCH

2.30pm  
Tauranga Yacht Club,  
90 Keith Allen Drive,  
Tauranga.

SUN  
7  
MARCH

12pm  
Te Manawaroa,  
Level 1 University of Waikato,  
101 Durham Street, Tauranga.



# TAB 18





---

# THE FUTURE OF TECT

## CONSUMER INFORMATION MEMORANDUM

---

18 February 2021



## Contents

---

1. Notice of Proposal	3
2. Why are the Trustees making this Proposal?	8
3. What is the Proposal?	10
4. How will the proposal be implemented and how are TECT Beneficiaries involved?	13
5. TECT- Its Current Structure, Governance and Funding	16
6. TECT- Its Proposed Future Structure, Governance and Funding	18
7. Summary of Changes to the Trust Deeds	20
8. Frequently Asked Questions	23
9. Have your Say	26
10. Where to find further information	27
11. Have your say - TECT Beneficiary Feedback Form	28

# 1. Notice of Proposal

## TRUSTPOWER IS CHANGING, SO TECT MUST CHANGE TOO.

### 5 things you need to know:

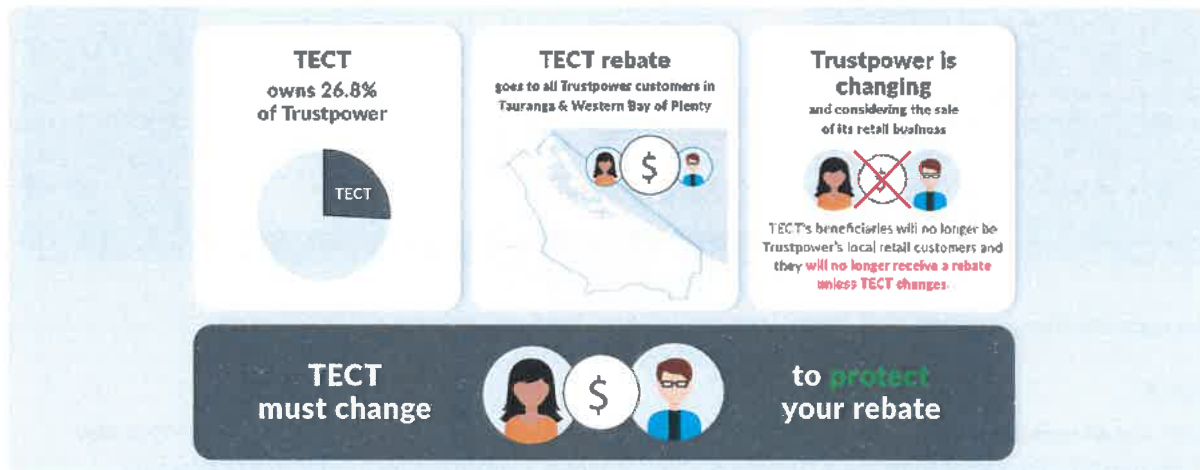
1. Trustpower is undertaking a strategic review of its Retail Business that includes considering its sale. This means that TECT also needs to review its structure and any changes required to it.
2. If a sale does take place, unless TECT changes its structure, the status of you - its beneficiaries - will be under threat.
3. The TECT rebate is protected under the new structure for approximately 30 years. Based on current financial projections you will continue to receive it until the end of 2050.
4. As a beneficiary you do not need to do anything further.
5. If you'd like to know more, read on or go to [www.tect.org.nz](http://www.tect.org.nz)

### What is happening and why is TECT putting forward this proposal?

We know that many of you will be wondering why TECT is again considering changes to its structure. The simple answer is because we have to.

Trustpower's decision to conduct a strategic review and potentially sell its Retail Business means that TECT must also consider changes to its structure and the way it operates.

This is because a sale of Trustpower's Retail Business to a third party means that, under the TECT Trust Deed, TECT's beneficiaries will no longer be you - Trustpower's local retail customers. This means that you would no longer be entitled to receive a rebate.



Instead, the beneficiaries after a sale would be only a small number of larger commercial and industrial electricity users in the Tauranga and Western Bay of Plenty region who will remain customers of the Trustpower Generation business if the Retail Business is sold.

As such, if and when a sale occurs TECT will not be able to fulfil its purpose, which is to benefit the broad base of electricity customers of Trustpower in Tauranga and the Western Bay District. In practice, this means that the Trustees will not be able to distribute rebates to local retail customers and TECT will effectively be frozen. The direct TECT rebate to you will stop.

Even if the current strategic review by Trustpower does not lead to a sale in the short term, it demonstrates the ongoing uncertainty of the ownership of the Retail Business and the Trustees believe that the structure of TECT needs to change to future-proof the Trust and the rebate.

Following Trustpower's announcement, the Trustees are therefore required to act now to consider updating the structure of TECT in order to meet their obligations under the TECT Trust Deed. The Trustees note that they wish to proceed with a restructure of TECT irrespective of whether Trustpower is ultimately successful in selling the Retail Business.

We are now seeking your views on this proposed new structure for TECT.

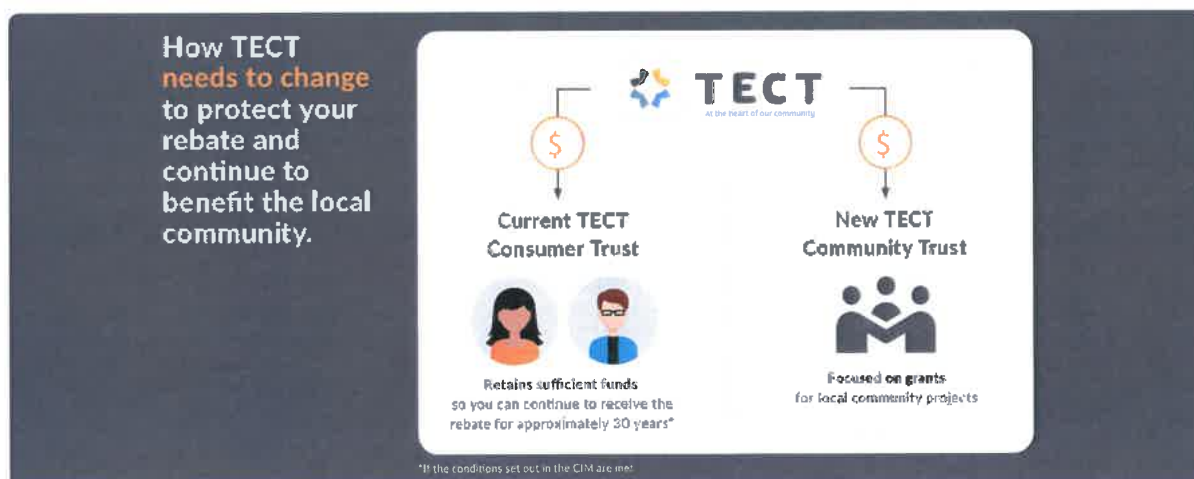
### How is TECT changing?

In considering options for a new structure for TECT and the transition to it, the Trustees have been guided by four key principles:

1. **TECT's purpose** – the purpose and intent for which TECT was created.
2. **Maintaining TECT's capital** – so that a trust can continue for future generations.
3. **Legal obligations and Trustee duties** – doing nothing is not an option.
4. **Fairness** – current beneficiaries and future generations all benefit.

We also heard your feedback in 2018 loud and clear and know how important the TECT rebate is to you.

The proposal therefore ensures that the rebate will continue to be paid for approximately 30 years, to every existing retail customer who remains an electricity customer of Trustpower or a buyer of Trustpower's Retail Business.



The steps for change include:

#### Step 1:

TECT would retain funds which are sufficient to pay a yearly rebate to all existing beneficiaries (as of Thursday 28 January 2021) for approximately 30 years (i.e., the intention is to retain enough funds to pay, based on current financial projections, rebates until 31 December 2050). The amount and structure of that retention has been developed using independent customer information from Trustpower to determine an appropriate churn assumption, and financial modelling from KPMG. The range is in the order of \$291 million to \$413 million. The Trustees have yet to finalise the retention, but intend to focus towards the high end of the range.

An existing beneficiary is essentially a customer of Trustpower in the defined Tauranga and Western Bay of Plenty District who currently is eligible to receive a rebate.

- The rebate will be \$500 a year for the first ten years, will increase to \$600 in 2030 and increase further to \$700 in 2040, to take account of inflation. \$500 was the averaged median rebate payment over the five previous years.
- Rebates will be paid on a usual six monthly TECT cycle.

- To receive a rebate a beneficiary must remain a customer of Trustpower or the buyer of the Retail Business (or a subsequent buyer), in the district - subject to limited exceptions. If you leave, the rebate stops<sup>1</sup>.
- New customers and the current customers of the new business do not become beneficiaries.
- At 31 December 2050, TECT must be wound up (if it has not been wound up earlier for example, due to the trust fund all having been paid out as rebates), and its remaining assets will go to the new TECT Community Trust described below.

There is no guarantee that rebates will be paid out until the end of 2050, but that is the current projection based on financial modelling. If the trust fund has been paid out in full earlier, TECT will end and rebates will end.

The changes will be implemented by changing the TECT Trust Deed as summarised in the Consumer Information Memorandum dated 18 February 2021, such as changes to the definition of Consumer, the distribution clauses to lock in the rebates, the removal of the restrictions on selling Trustpower Shares, the provisions regarding trustees and the provisions about winding up.

## Step 2:

The balance of TECT's funds (including its shareholding in Trustpower) would be transferred to a new long-term community trust focused on grants for local community projects.

## Why is TECT proposing to change this way?

The decision by Trustpower to conduct a strategic review and potentially sell its Retail Business means the Trustees must act now to futureproof the structure of TECT and protect the rebate for existing beneficiaries.

The proposed new structure will also resolve several important issues with the existing structure that have developed in recent years and pose ongoing risks to TECT:

1. **A shrinking beneficiary base** – when TECT was formed in 1993, 100% of electricity consumers in the Tauranga and Western Bay of Plenty region were beneficiaries. Today it's around 59% and decreasing by the day as more consumers choose to move to other electricity providers.
2. **Structural issues** – concern has been expressed previously about matters such as the relationship between the TECT rebate and Trustpower and there is a risk that this could be raised again.
3. **Trust law changes** – Trustees need to balance current and future beneficiaries, and to provide in effect intergenerational benefits. The new Trusts Act, which came into force in January 2021, changes TECT so that it has a total life of 125 years, placing more emphasis on future beneficiaries.

The changes to TECT's structure we are proposing will help resolve all these challenges and make sure that Trustees are meeting their obligation to maximise the benefit of the Trust for all beneficiaries.

## What can't we do?

In considering options for the future of TECT, the Trustees have also carefully considered and ruled out the following.

1. **Stop Trustpower selling the Retail Business** – TECT is a minority shareholder in Trustpower with only a 26.8% stake and therefore could not stop Trustpower from undertaking any proposed sale of the Retail Business.
2. **Continue with the status quo** – any potential sale of the Trustpower Retail Business would mean that only those customers of the remaining Trustpower generation business (commercial and industrial customers) would be beneficiaries of TECT. The previous retail customers would no longer be beneficiaries. This is unfair, which is why it is proposed that rebates continue for those who were beneficiaries on Thursday 28 January 2021. In addition, the other issues with the structure noted above would become even more pronounced.
3. **TECT remains unchanged and simply makes the customers of the new company the beneficiaries of TECT** – this would be against the scheme and purpose of TECT, as at that point TECT would not own any shares in the new company.
4. **Wind up TECT and pay out beneficiaries** – winding up TECT would be against the scheme and purpose of TECT.

<sup>1</sup> Some exemptions apply. See the proposed TECT Consumer Trust deed on the TECT website for more information.

## What now?

The strategic review and potential sale of Trustpower's Retail Business means that TECT must act to safeguard its future - we have no choice.

As Trustees, we believe that the new structure set out for TECT in this Consumer Information Memorandum will ensure the success of TECT for the Tauranga and Western Bay community for current and future generations, while protecting the rebate for existing beneficiaries for approximately 30 years.

We are particularly excited about the ability the proposed new structure will deliver to TECT in the future to fund more community projects, like the local rescue helicopter service and St John's, which serve and benefit everyone in our community.

We urge you to read the Consumer Information Memorandum carefully, to visit [www.tect.org.nz](http://www.tect.org.nz) for more information, and to come along to the public consultation meetings being held over the next month. You have the ability to make a submission in writing, and you will also have the opportunity to talk to your submission should you wish to.

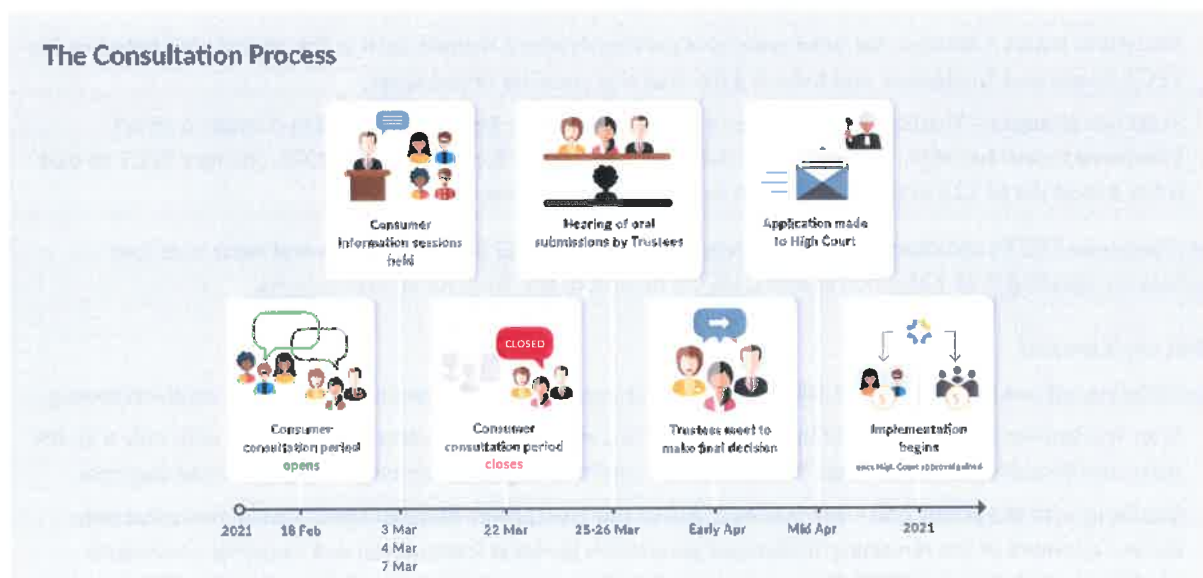
Once the public consultation process is complete, Trustees will make a decision on how to proceed.

As a final independent step, any changes the Trustees then propose will be reviewed by the High Court which will be asked to endorse the proposal and process. Consumers will be given an opportunity to make submissions to the High Court if they wish.

Please see the remainder of the Consumer Information Memorandum for further important information.

Yours sincerely,

The Trustees of TECT



## Formal Notice of Proposal

This document is a formal notice of proposal under the TECT Trust Deed.

Notice is hereby given by the Trustees of TECT in accordance with clause 11 of the TECT Trust Deed dated 21 December 1993 (as amended from time to time) to all of its Consumer beneficiaries of the proposal set out in this notice.

The following proposal is required to be disclosed pursuant to the Consumer Consultative Procedure set out in Schedule III to the TECT Trust Deed and therefore this Notice of Proposal is being given for that purpose.

**The Trustees propose the following:**

*"That TECT restructures in the manner set out in the Notice of Proposal dated 18 February 2021 and as referred to in the Consumer Information Memorandum dated 18 February 2021, including by amending the TECT Trust Deed, establishing the TECT Community Trust, causing TECT's indirectly held shares in Trustpower to be transferred into that new trust, and making the distributions and rebate payments referred to in those documents."*



## 2. Why are the Trustees making this Proposal?

---

The Trustees of Tauranga Energy Consumer Trust (TECT) (the Trustees) seek Consumers<sup>2</sup> feedback on a proposal to:

- Future-proof TECT in light of the strategic review, and potential sale, by Trustpower of its consumer electricity, gas and telecommunications businesses (Retail Business); and
- Whether that sale occurs or not, resolve several important issues with the existing structure that have developed in recent years and pose ongoing risks to TECT.

### Why are the Trustees making this Proposal now?

#### TRUSTPOWER IS CHANGING, SO TECT MUST CHANGE TOO.

Trustpower has announced a strategic review of its Retail Business, and a possible outcome of that review is that Trustpower sells its Retail Business.

If a sale of Trustpower's Retail Business proceeds:

- The current retail and consumer customers of Trustpower's Retail Business will cease to be "Consumers" under the TECT Trust Deed on a sale occurring, as legally the buyer does not become a "successor" of Trustpower under the TECT Trust Deed.
- The only "Consumers" of Trustpower for the purposes of the TECT Trust Deed will be the small number of larger commercial and industrial electricity customers retained by Trustpower in the Tauranga and Western Bay of Plenty district.

That would mean that TECT would no longer be able to be administered in a way that is consistent with its terms and objectives, and in a practical sense its purposes will have been frustrated.

Therefore, if a sale proceeds, there is no choice but to undertake some form of change to preserve and protect those objectives. With no change, current consumers who transfer to a buyer of Trustpower's retail assets would get no future rebates.

Even if a sale by Trustpower does not follow the strategic review, the Trustees believe that the review indicates that Trustpower is unlikely to remain the owner of the Retail Business for the whole of the remaining life of TECT (almost another 100 years), and as Trustpower itself notes there are significant changes in the energy market. That belief, when combined with the range of other structural issues (noted below) that have also emerged, reinforce that there is a need for change whether a sale occurs or not.

As a result of all this, the Trustees of TECT are of the strong view that doing nothing is not an option. Trustees have agreed on a proposal for change. The Trustees' proposal is a response to Trustpower's strategic review, but the Trustees are clear that they wish to proceed with the restructure whether or not Trustpower's review leads to an immediate sale by Trustpower of its Retail Business.

The proposal in Section 3 of this Consumer Information Memorandum is advantageous to the current Consumers of Trustpower's Retail Business, as they will continue to receive rebates from TECT. It also benefits current and future members of the Tauranga and Western Bay community through the new charitable trust.

The Trustees have of course considered other options, and they are discussed later in Sections 3 and 4 of this Consumer Information Memorandum along with the reasons why the Trustees are not proposing them.

<sup>2</sup> A "Consumer" under the TECT Trust Deed is defined, in summary, as a person who is named in the records of Trustpower as being liable to pay Trustpower any amount for electrical energy supplied or to be supplied to premises situated in the defined Tauranga and Western Bay of Plenty districts.

### **What other structural issues point to a change being appropriate?**

The structural issues that have been identified over time are as follows:

- The beneficiaries of TECT, the Consumers, are reducing over time. When the trust was formed in 1993, TECT served all consumers connected to the electricity lines within the TECT district. Today it is only 59%, and declining.
- There is a tension between making grants and declining numbers of Consumers - as grants should provide benefits to Consumers principally. That gets harder over time, and of course there is a degree of impracticality that has emerged as no charity or community group has only the same beneficiaries as TECT.
- There is ongoing interest in the relationship between TECT and Trustpower, and the impact of rebates on electricity pricing. That interest has been from the Commerce Commission and consumers, some of whom have complained to the Commerce Commission. The issue was referenced in the recent NZ Electricity Pricing Review. While no issues were found, the matter will no doubt be examined again at some point.
- The Trustees need to balance current and future beneficiaries, and to provide in effect intergenerational benefits. The new Trusts Act, which came into force in January 2021, changes the trust so that it has a total life of 125 years, arguably placing more emphasis on future beneficiaries. The TECT Trust Deed has provision for an automatic extension to that 125 years, which confirms this intention to operate beyond the current consumers.

The Proposal addresses these issues, providing for current and future beneficiaries and providing certainty around the rebate allowing Trustpower and other market participants to structure their offers to consumers with transparent information about the rebate.

### 3. What is the Proposal?

---

#### The Proposal

The Trustees have aimed to develop a proposal that seeks to preserve the interests of Consumers, and grow the amount it invests for the wider benefit of the community to benefit generations to come.

The following is a summary of the main aspects of the proposal:

- TECT would be renamed the TECT Consumer Trust.
- Consumers (as defined in the TECT Trust Deed) in the Tauranga and Western Bay of Plenty District (also as defined in the TECT Trust Deed) who are Trustpower electricity customers (Eligible Consumers) on Thursday 28 January 2021 (Record Date), being the date of Trustpower's announcement of its strategic review, will continue to receive a rebate from TECT, irrespective of whether Trustpower's Retail Business is sold or kept.
- Eligible Consumers include both retail consumers and commercial and industrial customers. Current customers of a buyer of the Retail Business, and future customers of Trustpower or such a buyer are not Eligible Consumers, and will not receive a rebate.
- The annual rebate would be \$500 per eligible ICP for each Consumer, irrespective of size or type of consumer. The number of ICP's will be capped at the number recorded against the Eligible Consumer on the Record Date plus the ability to add an additional five (any additional ICP's must be in the TECT district, and meet the eligibility criteria).
- \$500 is the averaged median amount of the annual rebates Eligible Consumers received in the previous five years.
- Other key attributes of the rebate are:
  - The rebate is to be paid in two instalments, i.e. \$250 every six months. The trustees would have the right to modify the frequency of payments.
  - The rebate amount will increase to \$600 in 2030 and \$700 in 2040, to reflect inflation. The TECT Consumer Trust Deed will prohibit other adjustments, down or up, other than following a detailed procedure including a consumer consultation and vote, and approval by the High Court.

The current rebate eligibility criteria will largely apply (i.e. must be customer of the relevant company for the 6 month period) - see [www.tect.org.nz/rebates/](http://www.tect.org.nz/rebates/)

  - If a consumer misses a rebate due to not meeting the 6 month eligibility period, they remain a consumer and can be included in the next rebate if they meet the following 6 month eligibility requirements. However, if they miss 3 consecutive rebates, they become ineligible for all future rebates.
- Eligible Consumers would remain entitled to receive a rebate for so long as they remain electricity customers of Trustpower or of the buyer (or any subsequent buyer) of the Retail Business, in each case in the District, until TECT is wound up.
- A new charitable trust (the TECT Community Trust) would be set up to benefit community groups and organisations in the Tauranga and Western Bay of Plenty District. The TECT Consumer Trust would distribute a portion of its assets (including its shares in Trustpower) to the TECT Community Trust when the Proposal was implemented. In this way, the proposal looks after the interests of future beneficiaries and the entire community of electricity users in the District.
- The TECT Consumer Trust would retain sufficient assets to pay for the rebates to Eligible Consumers (estimated currently to be approximately 49,000). The amount has been determined by financial modelling undertaken with support of Trustpower, KPMG and Findex. The amount retained would be loaned to the TECT Community Trust who would invest it, and would pay interest and repay principal to the TECT Consumer Trust in amounts sufficient for it to make the rebate payments. The range is in the order of \$291 million to \$413 million. The Trustees have yet to finalise the retention, but intend to focus towards the high end of the range.

- The TECT Consumer Trust would be wound up, and its remaining assets would be distributed to the TECT Community Trust, in approximately 30 years' time. The intention is that the TECT Consumer Trust will continue to pay rebates until 31 December 2050, but if the trust fund is fully spent earlier then the TECT Consumer Trust would then be wound up.
- The existing TECT Charitable Trust would be wound up when the proposal was implemented.

The Trustees note that they wish to proceed with a restructure of TECT irrespective of whether Trustpower is ultimately successful in selling the Retail Business, for the reasons noted earlier.

#### **How long will I continue to receive a rebate?**

As a result of the above proposal you will continue to receive your rebate, until:

- You change electricity supplier from Trustpower or the buyer of Trustpower's Retail Business (or a subsequent buyer).
- If you miss a rebate, because you cease to be eligible, but then re-join Trustpower or such a buyer before the next rebate, then you become eligible again.
- If you cease to meet the eligibility requirements of a Consumer for 18 months, you lose eligibility forever.
- The TECT Consumer Trust is wound up in approximately 30 years.

#### **Who will not get a rebate?**

The following groups will not receive a rebate:

- The existing customers of a buyer of Trustpower's Retail Business, whether in the Tauranga and Western Bay of Plenty region or elsewhere.
- New customers of Trustpower or a buyer of Trustpower's Retail Business, whether in the Tauranga and Western Bay of Plenty region or elsewhere.

## What alternative proposals have been considered?

In formulating and agreeing on the proposal, the Trustees considered a wide range of options, and some of those are set out below along with the reasons they are not proposed and are not acceptable to the Trustees.

Alternative	Trustee Comments
<p>TECT remains unchanged and simply makes the Tauranga and Western Bay of Plenty customers of the buyer of the Retail Business the Consumers of TECT by making the "Company" under the TECT Trust Deed refer to that buyer.</p>	<p>This is inconsistent with the scheme and purpose of the TECT Trust Deed, particularly as TECT would have no shareholding in that company.</p> <p>The Trustees also consider that it would be unfair as it would benefit consumers who did not support Trustpower.</p>
<p>TECT is wound up and its assets are distributed to Consumers.</p>	<p>This would be inconsistent with the purposes for which TECT was established and therefore is unlikely to be approved by the High Court.</p>
<p>TECT continues with changes to pay rebates to Eligible Consumers but only for a short period of time (e.g. under 10 years).</p>	<p>The Trustees consider that a smaller defined period is not appropriate and that Eligible Consumers should receive an ongoing rebate for so long as they are customers of Trustpower or the Trustpower Retail Business and remain eligible to do so, for a long period of time.</p> <p>The Trustees have listened to this feedback from 2018.</p>
<p>TECT pays a lump sum capital payment to existing beneficiaries, as well as ongoing rebates.</p>	<p>This would be inconsistent with the purposes for which TECT was established and therefore is unlikely to be approved by the High Court.</p>
<p>TECT continues and pays rebates to all existing customers of the buyer of Trustpower's Retail Business, as well as Eligible Consumers.</p>	<p>The Trustees consider that this would be inconsistent with the purposes of TECT, as it would benefit customers who had chosen not to be Trustpower customers.</p> <p>Additionally, it would mean the trust funds may need to be applied to a much wider group of consumers, and rebates may decrease.</p>
<p>TECT continues and pays rebates to all existing customers and all new customers of the buyer of Trustpower's Retail Business, as well as Eligible Consumers.</p>	<p>The Trustees consider that this would be inconsistent with the purposes of TECT, as it would benefit customers who had chosen not to be Trustpower customers.</p> <p>Additionally, it would mean the trust funds may need to be applied to a much wider group of consumers, and rebates may decrease.</p>

## 4. How will the proposal be implemented and how are Consumers involved?

---

### Implementation of the Proposal

The Trustees all support the proposal, as described in Section 3 of this Consumer Information Memorandum.

However, while they have to date voted unanimously to put the proposal to Consumers for consultation, they will not vote finally on the proposal until the following steps have occurred:

- All the requirements of the TECT Trust Deed have been met, including completion of the Consumer Consultative Procedure under the TECT Trust Deed.
- Completion of a series of Consumer Information Sessions.
- Receipt and consideration of feedback and submissions of Consumers.
- Finalisation of any changes to the proposal as a result of the consultation and feedback/submission process.

At that point, the Trustees will vote on the final proposal. For it to proceed, the Trustees must approve it unanimously.

The final stage would be a High Court approval. Trustees would lodge an application to the High Court for final approval of the proposal.

These are explained more below.

### Requirements of the TECT Trust Deed

The amendments required to the TECT Trust Deed to implement the proposal would be made in accordance with clause 13 of the TECT Trust Deed and will require a unanimous approval of the Trustees, and that the Consumer Consultative Procedure in the TECT Trust Deed be followed.

The distribution of assets to be made by the TECT Consumer Trust to the TECT Community Trust will be made in accordance with clauses 5.3, 6 and 9.3 of the TECT Trust Deed (as amended as part of the proposal).

The TECT Trust Deed's Consumer Consultative Procedure requires that the Trustees implement the following:

- a. Place notice of the proposal before a meeting of the Trustees;
- b. Give notice of the proposal to Consumers in accordance with clause 11 of the TECT Trust Deed;
- c. In every notice given under paragraph (b), specify a period within which Consumers interested in the proposal may make submissions on the proposal to the Trustees;
- d. Ensure that any Consumer who makes written submissions on the proposal within the period specified in the notice given under paragraph b. is given a reasonable opportunity to be heard by the Trustees;
- e. Ensure that every meeting at which submissions are heard are open to Consumers; and
- f. Make all written submissions on the proposal available to Consumers.

The period specified pursuant to paragraph c. above will not be less than one month and no more than three months.

The Trustees are now implementing this procedure, and this Consumer Information Memorandum is a part of that process.

The Trustees wish to consult widely with Consumers and will also hold Consumer Information Sessions.

### Consumer Information Sessions

The Trustees and TECT management will hold a series of Information Sessions on the proposal.

These will be informal sessions where Consumers can talk to Trustees directly, and provide feedback.

All Consumers, and other interested stakeholders and persons, are welcome to attend the sessions<sup>3</sup>.

The sessions will be held at the places and times set out in Section 8.

<sup>3</sup> The Trustees continue to closely monitor the situation in New Zealand with regard to COVID-19. In the event of any significant developments, the Trustees may, at their discretion, elect to reschedule or hold as an online-only meeting any of the Consumer Information Sessions, if there are potential risks to the health of session attendees, or if an in-person meeting is prohibited by law. In such circumstances, TECT will provide Consumers with as much notice as is reasonably practicable by way of an announcement on TECT's website at [www.tect.org.nz](http://www.tect.org.nz).

### **Submissions and Submission Hearings**

The Trustees welcome submissions from all Consumers. A feedback form is attached to this Consumer Information Memorandum or can be downloaded from [www.tect.org.nz](http://www.tect.org.nz)

These are due by 4pm on 22 March 2021, and can be provided to Trustees at the Consumer Information Session or as set out in Section 8.

In accordance with the TECT Trust Deed, all written submissions will be available for Consumers to view.

The Trustees will also hold formal submission hearings, where Consumers can come and talk to their views. Submitters who wish to attend formal submission hearings and be heard should indicate this on their submission form. Submitters who wish to speak to their submission will each be allocated ten minutes to be heard.

The Submission hearings will be held at the places and times set out in Section 8.

### **Trustees' Deliberations**

The Trustees will consider all written and verbal submissions, and then consider if they wish to proceed to the next stage, and if any modifications should be made to the proposal. Based on the feedback and submissions, the Trustees will finalise a proposal.

### **Trustee Decision**

Once the Trustees have a final proposal, they will vote on it.

For a proposal to proceed, they must vote on it unanimously.

### **High Court Approval Process**

A final step is to seek a High Court endorsement of the Consumer and Trustee approved proposal under s 133 of the Trusts Act 2019.

Courts in New Zealand have legislative and inherent jurisdiction in respect of trusts, including TECT. Where a decision that the trustees need to make is particularly significant in its potential impact on the trust, the trust's beneficiaries and/or its assets, the Trustees can apply to the High Court for approval of their proposed course of action.

Here, the Trustees believe that given the significant restructuring the Trustees intend to undertake, an application to the High Court for endorsement of the Consumer and Trustee approved proposal (i.e. once that proposal is finalised) is appropriate.

The Trustees would make this application on the basis that:

- There is a need for the restructuring. If the strategic review of Trustpower leads to the sale of its Retail Business to a third party purchaser, this would be a change of such substance to the circumstances surrounding TECT, that its purpose and objectives would be frustrated. If the strategic review does not lead to a sale of the business, the fact of it occurring indicates to the Trustees that Trustpower is unlikely to remain the owner of the business for the whole of the remaining life of the Trust. In addition, there are other structural issues with TECT that compel a change.
- The TECT Trust Deed gives the Trustees the express powers to undertake the necessary steps for the proposed restructuring.
- The Trustees would not be in breach of their duties by undertaking the proposed restructuring. The duties that are most relevant to the current issues are to act in the best interests of the beneficiaries and to act for a proper purpose. The Trustees are satisfied that they are complying with both of these duties, however, they intend to apply to the High Court to confirm the validity of these actions.
- The Trustees have considered the alternative restructuring options and believe that the proposed restructuring is in the best interests of the beneficiaries.

This application can only be made after the Consumer Consultative Procedure has been concluded and the Trustees have made their decision. Any earlier High Court application would be hypothetical and the High Court would be unlikely to hear the application.

Chapman Tripp has prepared a memorandum to Consumers setting out a more detailed analysis of the submission that the Trustees intend to make to the High Court. This is available on the TECT website.

Beneficiaries will be notified of the High Court application, and will be able to obtain a full copy of the Court documents on request. Beneficiaries are entitled to participate in the hearing, including by being represented by counsel if they wish. At an early stage in the proceeding, the High Court will consider whether it should appoint any counsel to represent beneficiaries generally or any subset of beneficiaries.

The timeframe for a High Court decision being made depends on the availability of the High Court and whether the application is opposed. The first step will be to seek initial orders as to how the proceedings are to be notified to beneficiaries and whether to appoint lawyers to represent beneficiaries or any subset of beneficiaries.

### Summary of expected timetable

Event	Date
Public Release of Proposal Consultation Period Opens	18 February 2021
Consumer Information Sessions (refer to page 26 of this Information Memorandum for Session dates & times)	3 March 2021 – 7 March 2021
Submission Period Closes	4pm 22 March 2021
Hearing of Verbal Submissions and deliberation on Consumer feedback	25 & 26 March 2021
Trustees' Meeting to determine whether to proceed or not and agree final proposal Resolution of the Trustees to proceed or not	Early April 2021
Trustees file their application in the High Court seeking orders approving the restructure	TBC
The High Court application will be notified to beneficiaries, probably by way of posted material, advertisements and on-line materials	TBC
A hearing will be held at which TECT will present its submissions. Beneficiaries can participate if they wish.	TBC
High Court decision released	TBC



## 5. TECT – Its Current Structure, Governance and Funding

---

### Background

In 1993 TECT was established out of the electricity reforms with a straightforward purpose based on its shareholding in Trustpower Limited, to hold shares for the benefit of current and future Consumers. It is now one of New Zealand's largest energy trusts.

TECT's income and capital is used to provide benefits to Consumers during the term of the trust. Consumers (approximately 49,000 Consumers with 53,000 connections (ICPs)) are Trustpower account holders located in Tauranga City and the Western Bay of Plenty District.

It is important to remember that TECT is an entirely separate entity to Trustpower.

Currently the assets of the Trust are held by TECT, TECT Charitable Trust, TECT Holdings Limited and TECT Property Limited. These entities form the TECT Group.

As at TECT's latest balance date (31 March 2020), the TECT Group owns an investment portfolio valued at over \$870 million.

### Trust Beneficiaries and Community Distributions

The TECT Group provides benefits to Consumers in two ways:

- Through the annual TECT rebate that comprises approximately 80% of the distribution (the averaged median payment for the last five years was approximately \$500 per Consumer).
- Through the grants programme that comprises approximately 20% of the distribution (in 2019/20 \$9 million was available to distribute via the grants programme).

TECT makes grants and donations to community organisations throughout Tauranga and the Western Bay of Plenty District each year. TECT makes grants in the education, arts, sport, recreation, environment, energy efficiency, heritage, health and social services areas. Last year TECT received approximately 250 applications and approved 231, the highest in TECT's history.

TECT has also led or contributed to significant projects such as the new Tertiary Campus, TECT Park, and has also provided community groups with a modern co-working space at The Kollektive, which houses a number of community groups at the Historic Village.

### Trustees and Management

At present the trustees of TECT and the existing TECT Charitable Trust are the same, and an election is held every two years.

The Trustees are elected by approximately 49,000 Consumers.

The terms of appointment of Trustees are four years and are staggered so that three Trustees retire every two years. There are currently six Trustees who are:

- Bill Holland (Chair)
- Natalie Bridges (Deputy Chair)
- Peter Blackwell
- Peter Farmer
- Mark Arundel
- Tina Jennen

Wayne Werder is TECT's General Manager and he is supported by a small team.

Biographies for the Trustees and senior management are available on the TECT website.

## **Grants Programme**

TECT provides funding to community and charitable groups, who:

- are located or delivering services in the Tauranga and Western Bay of Plenty Districts; and
- can deliver positive community outcomes in the opinion of the Trustees, consistent with the distribution policies of TECT.

The Trustees have an existing distribution policy for giving to community organisations. Trustees revisit the policy as appropriate. The key aspects of the policy are as follows:

- approved grants must contribute towards the achievement of the strategic priorities of TECT;
- the project/organisation must demonstrate good decision-making, and a clear element of community or charitable benefit in the outcomes, including the number of people positively impacted;
- distributions are intended to supplement Government responsibilities rather than replace them.

## **Annual Distribution Plan**

The current Annual Distribution Plan policy is:

- Where corporate activity and/or incomes allow, TECT aims to distribute at least 75% of its net income. A draft annual distribution plan is published and Trustees consult with Consumers on that document.
- The Trustees confirm the funds available and the number of application rounds per fund and make cut off dates public.
- The criteria for what TECT will fund will be determined by each fund and be made clear to all prospective applicants.

## 6. TECT - Its Proposed Future Structure, Governance and Funding

---

### Structure

#### 1. TECT Consumer Trust

TECT will be amended to ensure that Eligible Consumers continue to be entitled to the rebates described in Section 3 of this Consumer Information Memorandum, and to implement the other aspects of the proposal in that Section. It will retain sufficient assets to fund the rebates over time.

#### 2. New TECT Community Trust

This trust will be a new modern charitable trust established under the proposal for the benefit of the public in the District, and to which the balance of TECT's assets (other than those assets which will be retained by TECT to fund the rebate) will be transferred.

#### 3. Existing TECT Charitable Trust

This trust will be wound up under the proposal.

### Trustees and Management

The Trustees of the new TECT Community Trust will be elected from the people registered on the electoral roll of the Tauranga City and the Western Bay of Plenty District Councils.

Those Trustees would also be Trustees of the TECT Consumer Trust.

- There will be up to six trustees elected.
- If the elected trustees so decide, up to two (2) additional Trustees can be appointed by the elected trustees. Any appointment requires unanimous approval of all Trustees.
- Elections will be held every two years, and an Independent Returning Officer will be appointed by the trustees to oversee the election process.
- Trustees once elected will serve four year terms. Trustees will not be permitted to serve more than three terms.

On implementation of the proposal set out in Section 3 of this Consumer Information Memorandum, the trustees of both the TECT Consumer Trust and the TECT Community Trust will be the existing Trustees of TECT. The first election for new trustees will be held in 2022.

It is proposed that the current TECT management team would transition to the new TECT Community Trust, which would provide administrative services to support the operation of the TECT Consumer Trust.

### Funding Distributions from the Trusts

Rebates paid by the TECT Consumer Trust would be funded from the assets retained within the TECT Consumer Trust for this purpose. To ensure efficient management and investment of those assets, they would be loaned to the new TECT Community Trust who would invest them, and who would make principal and interest payments each year, sufficient to pay the rebates to Eligible Consumers.

It is intended that distributions to community groups and organisations will be made by the new TECT Community Trust and will continue to be guided by an Annual Distribution Plan. However, the actual amount of funding available to community groups and initiatives will likely increase more than threefold over time. This will have a transformative impact on the Tauranga and the Western Bay of Plenty community sector.

### Community Engagement

It is intended that the future type of community consultation / engagement undertaken by the new TECT Consumer Trust would be similar to what occurs now.

It is intended that the future type of community consultation / engagement undertaken by the new TECT Community Trust would be also similar to that which occurs currently. This includes a commitment to continue with:

- an annual meeting / annual reporting;
- consultation on the Annual Distribution Plan;
- grants functions that publicise grant recipients;
- regular communications (e.g. e-news, website); and
- consultation with community on significant decisions / grants.

The community will be able to request disclosure of information about the TECT Community Trust, and the TECT Consumer Trust as it can currently about TECT.

### **Future Investment Approach**

As is currently the case with TECT (and which will continue), the TECT Consumer Trust and the TECT Community Trust will be governed by a Statement of Investment Policies and Objectives (SIPO).

The Trustees will continue to take independent investment advice and will update the SIPO from time to time. The SIPO will set out the guidelines for future investment.

## 7. Summary of Changes to the Trust Deeds

---

### Summary of Changes to the TECT Trust Deed

If the proposal by the Trustees proceeds, there will be a number of material changes to the current TECT Trust Deed. This is a summary only of the changes, and reference should be made to the full copy of the proposed TECT Consumer Trust Deed that can be found at [www.tect.org.nz](http://www.tect.org.nz). A summary of the changes and rationale for these can also be found on the website.

### Purposes of the TECT Consumer Trust

The purposes of TECT as currently stated in clause 4 of the TECT Trust Deed would be updated by removing reference to the holding of shares in Trustpower and receiving Trustpower dividends. The decision whether the TECT Consumer Trust or the TECT Community Trust would hold or continue to hold some or all of the Trustpower shares would be made by the relevant Trustees from time to time. These changes reflect that TECT's asset base is significantly more extensive than just its interests in Trustpower. However, the key purpose of applying Trust income that Trustees do not resolve to accumulate to or for the benefit of Consumers in the manner provided in clause 5 of the TECT Trust Deed would remain the same.

### Reason for the Changes

The TECT Trust Deed would be amended to permit:

- Consumers to continue to receive the rebates described in Section 3 of this Information Pack, irrespective of whether Trustpower's Retail Business is sold.
- The TECT Consumer Trust to distribute to the TECT Community Trust the balance of its assets not required to pay rebates.
- The winding up of the TECT Consumer Trust and the distribution of its remaining assets to the TECT Community Trust to occur on 31 December 2050, if the TECT Consumer Trust has not been wound up earlier.

### Key changes

#### 1. Consumers

- (a) Currently, Consumers are defined as: (i) any person who is named in the records of Trustpower as being liable to pay for electricity supplied to premises in the District (comprising the Tauranga City and Western Bay of Plenty District, with some small exceptions – see footnote 4 below), (ii) the Existing Charitable Trust, and (iii) any other entity wholly owned and/or controlled by TECT and whose beneficiaries and objectives are substantially the same as TECT's.
- (b) Under the changes, Consumers will be limited to: (i) electricity customers of Trustpower in the District on Thursday 28 January 2021, being the date that Trustpower announced the sale process for the Retail Business (Record Date), for so long as they remain an electricity customer of Trustpower or a purchaser of the Retail Business and (ii) the TECT Community Trust, on the winding up of the TECT Consumer Trust.
- (c) It would not include: (i) any consumer who ceases to be an electricity customer of Trustpower or a purchaser of the Retail Business after the Record Date (subject to limited exceptions described earlier in this Consumer Information Memorandum), (ii) any existing customer of a purchaser of the Retail Business, whether in the District or elsewhere, or (iii) any new customers acquired by a purchaser of the Retail Business after the Record Date, whether in the District or elsewhere.

<sup>4</sup> "District" means:

- (i) The territory over which the Board was authorised to supply electricity immediately prior to the "Vesting Date" pursuant to the Tauranga Electric Power Board Supply Licence granted to the Board under section 20 of the Electricity Act 1968; and
- (ii) The territory over which Tauranga Electricity Limited was authorised to supply electricity immediately prior to its merger with Trustpower in 1997 and includes, for the avoidance of doubt, that area comprising the Tauranga City peninsula north of the centreline of 17th Avenue, Tauranga.
- (iii) Parts of Waihi Beach are excluded from the District. 106 Seaforth Rd – Bowentown end is included in the District. 104 Seaforth Rd – Waihi Beach is excluded.

## 2. Distributions

- (a) At present, TECT may make distributions to, or for the benefit of, Consumers.
- (b) The TECT Trust Deed would be changed so that: (i) distributions by the TECT Consumer Trust during its life may be made to Consumers only, and (ii) distributions of both income and capital would be allowed as rebates. The amount of the rebate payable to Consumers would be \$500 per annum, and will increase to \$600 in 2030 and \$700 in 2040 to reflect inflation, as described earlier in this Consumer Information Memorandum.

## 3. Trustpower shares

- (a) The sale of Trustpower shares above a certain level currently requires the Trustees to first complete the Consumer Consultative Procedure.
- (b) Under the changes, the requirement to undertake the Consumer Consultative Procedure on the sale of any Trustpower shares (or the shares of any successor) will be removed. The Trustpower shares that TECT currently owns will be transferred to the new Community Trust, and decisions about the future sale of those shares would be made by the trustees of that new trust.

## 4. Trustees

- (a) Currently, Trustees of TECT are elected by Consumers and automatically become trustees of the existing TECT Charitable Trust.
- (b) This would be changed so that the trustees of the TECT Consumer Trust would be the trustees elected as trustees of the TECT Community Trust.
- (c) There will be up to six trustees elected.
- (d) If the elected trustees so decide, up to two (2) additional trustees can be appointed by the elected trustees. Any appointment requires unanimous approval of all Trustees.
- (e) Elections will be held every two years, and an Independent Returning Officer will be appointed by the trustees to oversee the election process.
- (f) Trustees once elected will serve four year terms. Trustees will not be permitted to serve more than three terms.

## 5. Winding up of the TECT Consumer Trust

- (a) At present, taking into account the changes brought about by the new Trusts Act, the vesting date of TECT is December 2118, being 125 years after establishment (unless wound up earlier). If the trust holds less than 5% of Trustpower's shares, the Trustees must implement a Consumer Consultative Procedure to determine whether to wind up the Trust.

Under the changes, the vesting date of the TECT Consumer Trust would become 31 December 2050.

- (b) At present, upon the winding up of TECT, all surplus assets after payment of costs, debts and liabilities are currently paid or applied for the benefit of Consumers. This would be changed so that all surplus assets on a winding up of the TECT Consumer Trust are distributed to the TECT Community Trust, to be applied for the benefit of the community in accordance with the provisions of that trust.

## Summary of the new TECT Community Trust Deed

### Purposes of the trust

The TECT Community Trust will be a community trust established for charitable purposes which benefit the community in a newly defined District (to be based on the boundaries of the two councils; Tauranga City Council, and Western Bay of Plenty District Council). This change simplifies some historic boundary issues particularly in regard to Waihi Beach.

"Charitable purposes" are essentially any purposes where there is benefit for a wide section of the public. It includes what are traditionally recognised as charitable purposes such as relief of poverty, advancement of education and religion but also includes matters such as environmental protection and preservation, restoring or protecting heritage sites, providing community facilities, improving health outcomes for the community, helping vulnerable members or sections of the community, and assisting in natural disaster recovery.

Grants will also be able to be made for charitable purposes outside TECT's District, but only where there is a benefit to the community in the District. An example of this would be a charitable organisation outside the District which is used frequently by members of the District.

### Governance of the trust

The trust will be governed by a group of trustees in essentially the same way as TECT is now. There will be up to six trustees elected by members of the public in the District who wish to vote, and up to two trustees appointed from time to time by the other trustees. Elections will be held every two years, and an Independent Returning Officer will be appointed by the trustees to oversee the election process.

Trustees once elected will serve four year terms. Trustees will not be permitted to serve more than three terms.

The trustees will have broad powers to govern the trust and invest the trust's assets, similar to other community and charitable trusts in New Zealand. Reflecting modern trends, the TECT Community Trust Deed will permit the trustees to consider what is known as "impact investing", where assets are investing in projects that have a blended return, i.e. a financial return but also a social or environmental impact.

### Public consultative procedure

The concept of the consultative procedure has been carried over from the existing TECT Trust Deed. Certain key variations to the TECT Trust Deed will require the trustees to undertake public consultation, as will the winding up of the trust. The procedure provides that public notice of the relevant proposals is to be given in the District and members of the public who wish to make submissions will have the opportunity to do so and to be heard by the trustees.

### Duration of the trust

As a charitable trust, the trust can exist indefinitely in law, so there is no fixed life (maximum duration) for the trust. If the trustees did for some reason decide to wind up the trust, all assets in the Trust Fund must be paid or applied to other charitable organisations or charitable purposes within the District chosen by the trustees that have similar charitable purposes to the trust.

## 8. Frequently Asked Questions

---

### 1. Why is TECT proposing this change?

Trustpower's decision to conduct a strategic review and potentially sell its Retail Business means that TECT must also review and change its structure and the way it operates.

Under the TECT Trust Deed, the sale of Trustpower's Retail Business to a third party means that TECT's beneficiaries will no longer be Trustpower's local retail customers. This means they would no longer be entitled to receive a rebate. Instead, the beneficiaries will be only a small number of larger commercial and industrial electricity users in the Tauranga and Western Bay of Plenty region who will remain customers of the Trustpower Generation business if the Retail Business is sold.

This means that TECT will not be able fulfil its purpose, which is to benefit the broad base of electricity customers of Trustpower in Tauranga and the Western Bay region.

In practice, this means that Trustees will not be able to distribute rebates to retail customers and the Trust will effectively be frozen. The direct TECT rebate to retail customers will stop.

Given the Trustpower strategic review and the potential retail business sale process, the Trustees are required to act now to review the structure of TECT in order to meet their obligations under the TECT Trust Deed.

### 2. What changes are being proposed?

The steps for change include:

#### Step 1:

TECT (renamed as TECT Consumer Trust) retains sufficient funds to pay a yearly rebate of \$500 to all existing beneficiaries (as of Thursday 28 January 2021). The amount and structure of that retention has been developed using independent customer information from Trustpower to determine an appropriate churn assumption, and financial modelling support from KPMG. The range is in the order of \$291 million to \$413 million. The Trustees have yet to finalise the retention, but intend to focus towards the high end of the range.

Beneficiaries must remain a customer of Trustpower or a buyer, in the region - if you leave, the rebates stop with limited exceptions. New customers and the current customers of the new business do not become beneficiaries.

In about 30 years' time the TECT Consumer Trust must be wound up.

Any remaining funds in the TECT Consumer Trust at this point are transferred to the new TECT Community Trust.

#### Step 2:

The balance of TECT's funds are transferred to a new long-term community trust focused on grants for local community projects.

### 3. Why is this different to the change proposed in 2018 that failed?

The strategic review and potential sale by Trustpower of its Retail Business means that TECT must also review its structure - we have no choice.

### 4. Why do I lose my rebate if I change electricity supplier?

The Trustees consider that allowing you to keep receiving your rebate if you moved to another electricity supplier would be inconsistent with the purposes of TECT. At the outset, Trustees decided to keep the structure of the rebate consistent with the current scheme to protect the entitlements of current beneficiaries and ensure fairness for both current beneficiaries and future generations.



**5. What happens if Trustpower does not sell its Retail Business?**

Even if a sale does not proceed at this time, there are compelling reasons for proceeding with the proposed restructure. The strategic review has identified the ongoing risk of a change in Trustpower's ownership. Under its Trust Deed and given the recent trust law changes, TECT has nearly 100 years to run. When TECT was established in the early 1990s none of this was foreseen. The Trustees are clearly of the view that TECT needs to change in order to protect the rebate for existing beneficiaries.

In addition, the proposed new structure will also resolve several important issues with the existing structure that have developed in recent years and pose ongoing risks to TECT. The Trustees therefore wish to proceed with a restructure of TECT irrespective of whether Trustpower is ultimately successful in selling the Retail Business at this time.

**6. Does TECT agree with the decision by Trustpower to carry out a strategic review and consider a potential sale of its Retail Business?**

That's a commercial decision for the Trustpower board. TECT's Trustees duty is to assess what that decision means for TECT and its beneficiaries and take appropriate action, which we are doing.

**7. The Trustees didn't stand on a change mandate so why make them now?**

Trustpower has announced a strategic review of its Retail Business, and a possible outcome of that review is that Trustpower will sell its Retail Business.

If such a sale occurs, TECT will no longer be able to be administered in a way that is consistent with its terms and objectives, and in a practical sense its purposes will have been frustrated.

As such the Trustees need to review TECT's structure with a view to preserving and protecting those objectives. With no change to TECT's structure, current consumers who transfer to a buyer of Trustpower's Retail assets, if such a sale occurs, would get no future rebates.

In addition, over time a range of other structural issues have also emerged that reinforce the need for change.

**8. Why not wind up the Trust and transfer the existing assets back to beneficiaries?**

This would be inconsistent with the purposes for which TECT was established and therefore unlikely to be approved by the High Court.

Trustees need to balance the rights of current beneficiaries and future generations, to provide in effect intergenerational benefits.

**9. Why is TECT consulting before agreeing the final proposal?**

The TECT Trust Deed's Consumer Consultative Procedure requires that the Trustees implement the following:

- a. Place notice of the proposal before a meeting of the Trustees;
- b. Give notice of the proposal to Consumers in accordance with clause 11 of the TECT Trust Deed;
- c. In every notice given under paragraph (b), specify a period within which Consumers interested in the proposal may make submissions on the proposal to the Trustees;
- d. Ensure that any Consumer who makes written submissions on the proposal within the period specified in the notice given under paragraph (b) is given a reasonable opportunity to be heard by the Trustees;
- e. Ensure that every meeting at which submissions are heard are open to Consumers; and
- f. Make all written submissions on the proposal available to Consumers.

The Trustees are now implementing this procedure, and this Consumer Information Memorandum is a part of that process.

**10. Why don't beneficiaries get to vote on the proposed changes to TECT?**

Trustees have been advised that they cannot delegate their decision-making responsibility to beneficiaries. The process requires a consumer consultation, a Trustee decision on the final proposal, and then Trustees must take an application to the High Court.

**11. Why does the proposal need to go to the High Court?**

Courts in New Zealand have legislative and inherent jurisdiction in respect of Trusts, including TECT. Where a decision that the Trustees need to make is particularly significant in its potential impact on the Trust, the Trust's beneficiaries and/or its assets, the Trustees can apply to the High Court for approval of their proposed course of action.

The Trustees believe that an application to the High Court for endorsement of the approved proposal is appropriate to ensure that the proposed course of action is consistent with the TECT Trust Deed, in the best interests of Consumers and for a proper purpose.

**12. If the proposal proceeds, what input would Consumers have around the types of community initiatives that get funded each year?**

It is intended that the future type of community consultation / engagement undertaken by the new TECT Consumer Trust would be similar to the process that is currently undertaken.

This includes a commitment to continue with:

- An annual meeting / annual reporting.
- Consultation on the Annual Distribution Plan.
- Grants functions that publicise grant recipients.
- Regular communications (e.g., e-news, website); and
- Consultation with community on significant decisions / grants.

**13. What groups or initiatives will be funded through the community grants?**

As is the case now it is intended that distributions to community groups and organisations will be guided by an Annual Distribution Plan. This will include a commitment to engage with the community to design and confirm the policies that inform the Trustees' decision making. This will be ongoing and reflect the needs in the community at any point in time.

**14. How much money will be available to community organisations?**

It is intended that distributions to community groups and organisations will be made by the new TECT Community Trust and will continue to be guided by an Annual Distribution Plan. However, the actual amount of funding available to charitable and community groups and initiatives will likely increase more than threefold over time. This will have a transformative impact on the Tauranga and the Western Bay of Plenty community sector.

## 9. Have Your Say

---

All TECT beneficiaries are entitled to provide feedback on the proposal. A feedback form is attached to this Consumer Information Memorandum or can be downloaded from [www.tect.org.nz](http://www.tect.org.nz)

Beneficiaries who wish to comment on the proposal are invited to make a submission in writing by 4:00pm, 22 March 2021.

Submissions can be made through:

<b>Online at:</b> <a href="http://www.tect.org.nz/submissions">www.tect.org.nz/submissions</a>	<b>Delivered to:</b> TECT Office The Kollektive Historic Village 145 Seventeenth Ave Tauranga 3112	<b>Mailed to:</b> TECT Submissions PO Box 637 7th Avenue Tauranga 3144	<b>Scan and email to:</b> <a href="mailto:submissions@tect.org.nz">submissions@tect.org.nz</a>
---	---	--	---

In accordance with the TECT Trust Deed, all written submissions will be available for Consumers to review.

### Consumer information sessions

The Trustees will hold a series of consumer information sessions. These will involve a short presentation from Trustees on the proposed changes to TECT and the reasons for them, followed by a Q & A session.

Time	Date	Location
6:30pm	3 March 2021	Club Mount Maunganui, 45 Kawaka Street, Mount Maunganui.
2:30pm	4 March 2021	Tauranga Yacht Club, 90 Keith Allen Drive, Tauranga.
12pm	7 March 2021	Te Manawaroa, Level 1 University of Waikato, 101 Durham Street, Tauranga.

### Verbal submissions

The Trustees will hold meetings at which submitters can talk to their submissions. Consumers who have chosen to speak will be allocated a ten-minute speaking slot on either the 25th or 26th March 2021.

## 10. Where to find further information

---

Copies of the following documents are available free of charge at [www.tect.org.nz](http://www.tect.org.nz), or from the TECT office.

1. Consumer Information Memorandum.
2. Feedback Form.
3. Current TECT Trust Deed.
4. Current trust deed for the TECT Charitable Trust.
5. Proposed TECT Consumer Trust Deed.
6. Chapman Tripp summary of the changes (with rationale) to the TECT Consumer Trust.
7. Proposed TECT Community Trust Deed.
8. Chapman Tripp summary of arguments that the Trustees will put before the High Court.
9. TECT Annual Reports.
10. Annual Distribution Plan (2020/21).

## 11. Have your say – TECT Beneficiary Feedback Form

---

### Beneficiary Feedback Form

TECT beneficiaries\* who would like to give feedback on the proposal are invited to make a written submission by 4pm 22 March 2021. We request that you indicate if you would like to speak to your submission.

Please note that all submissions, including the name of the submitter, will be made available to beneficiaries. However, no contact details will be made available.

\*A TECT beneficiary is a Trustpower power account holder who is situated in the Tauranga City or Western Bay of Plenty District (the old Tauranga Electric Power Board area).

Name:

---

Email address:

---

Postal address:

---

Daytime phone number:

---

Trustpower account number:

---

My feedback is:

---

---

---

---

---

---

---

---

---

I wish to speak to my feedback at a hearing on either 25 March or 26 March: [ Y / N ]

(If yes, TECT will be in contact with further details, including hearing time and location)

---

To submit your feedback please:

Send feedback form to:

TECT Submissions  
PO Box 637  
7th Avenue  
Tauranga 3144

Scan and email to:

submissions@tect.org.nz

Submit online at:

[www.tect.org.nz/submissions](http://www.tect.org.nz/submissions)

## TAB 19



28th January 2021

# TECT assessing impact of Trustpower strategic review

You may have seen the [recent announcement](#) that Trustpower is undertaking a strategic review including the potential sale of its retail electricity, gas and telecommunications businesses.

As a 26.8% shareholder of Trustpower, and as a sale of the retail business would mean significant changes for TECT, we were briefed by Trustpower on the review in advance of it being publicly announced.

It is clear that the potential sale of Trustpower's retail business would require changes to the structure of TECT as the scope of TECT's beneficiaries will be impacted in a significant way with a change of ownership.

Trustees are well advanced in developing a proposal that outlines the changes to TECT's structure needed to meet the purpose of the Trust Deed, and to ensure that the best interests of the Trust and its beneficiaries are protected.

A priority for us is protecting the rebate for existing beneficiaries in the event of any changes to TECT's structure as a result of the potential sale of Trustpower's retail business.

We expect to shortly provide a full update to you on the proposed changes, which will be followed by a consultation process. Your views are important to us and we are committed to hearing them before any final decisions are made.

Yours sincerely,

TECT Trustees



## Trustpower is changing, so TECT must change too

Trustpower announced on 26 January 2021, that it is undertaking a strategic review of its retail business, that includes a potential sale. At that time, we wrote to you because you are a customer of Trustpower and a TECT beneficiary who receives the annual 'TECT Rebate', to let you know that Trustpower's decision means that TECT has to change.

Today, Trustees are releasing a proposal that outlines the changes to TECT's structure needed to meet the purpose of the Trust Deed, and to ensure that the best interests of the Trust and its beneficiaries are protected. This proposal protects the rebate for you as an existing beneficiary for approximately 30 years.

Further information about the proposal is set out for you in the Notice of Proposal below:

[View Notice of Proposal](#)

We encourage you to read the Notice of Proposal and to give us your feedback.

### HAVE YOUR SAY

All TECT beneficiaries are entitled to make a submission on the proposal. Beneficiaries who wish to comment on the proposal are invited to make a submission in writing by 4:00pm, Monday 22 March 2021.

Submissions can be made through:

**TECT website**  
[www.tect.org.nz/submissions](http://www.tect.org.nz/submissions)

**Mail to**  
TECT, PO Box 637,  
7<sup>th</sup> Avenue, Tauranga 3144

**Email**  
[submissions@tect.org.nz](mailto:submissions@tect.org.nz)

### CONSUMER INFORMATION SESSIONS

The Trustees are also holding a series of information sessions

<b>WED</b> <b>3</b> <b>MARCH</b>	<b>6.30pm</b> Club Mount Maungania, 45 Kinross Street, Mount Maungania
<b>THUR</b> <b>4</b> <b>MARCH</b>	<b>2.30pm</b> Tauranga Yacht Club, 90 Keith Allen Drive, Tauranga
<b>SUN</b> <b>7</b> <b>MARCH</b>	<b>12pm</b> University of Waikato, Te Manawa, Level 1, 101 Durham Street, Tauranga

### WANT MORE INFORMATION?

Copies of the following documents are available free of charge at [www.tect.org.nz](http://www.tect.org.nz) or from the TECT office

1. Consumer Information Memorandum
2. Feedback Form
3. Current Trust Deeds of Tauranga Energy Consumer Trust and the TECT Charitable Trust
4. Proposed TECT Consumer Trust Deed
5. Proposed Trust Deed for the new TECT Community Trust
6. Chapman Tripp Consumer Mems

Yours sincerely,

TECT Trustees

1st March 2021

## Consumer Information Sessions - still proceeding at Level 2

In light of the Alert Level 2 restrictions, the Consumer Information Sessions scheduled this week will proceed, but with some changes to ensure the safety of all those in attendance. The information sessions were scheduled for Consumers to learn more about the [proposed structure changes to TECT advised on 18th February 2021](#).

As per Level 2 restrictions, the number of people at each session will be limited to 100. If you would like to attend a session, please register your attendance by clicking the register link below for your preferred session.

If you attend, you will need to sign in via the Covid tracer app or a sign in sheet at the venue. Physical distancing will apply, and seating will be spaced out. If you feel at all unwell it is vital that you do not attend even if you have registered in advance.

We will continue to monitor the situation and will provide any relevant updates if required.




**WED**  
**3**  
MARCH

**6.30pm**  
Club Mount Maunganui,  
45 Kawaka Street, Mount  
Maunganui.

**Wednesday 3  
March**

[Register to attend](#)



**THUR**  
**4**  
MARCH

**2.30pm**  
Tauranga Yacht Club,  
90 Keith Allen Drive,  
Tauranga.

**Thursday 4 March**

[Register to attend](#)



**SUN**  
**7**  
MARCH

**12pm**  
University of Waikato,  
Te Manawaroa, Level 1,  
101 Durham Street, Tauranga.

**Sunday 7th March**

[Register to attend](#)

**Want more information and to have your say?**

TECT Beneficiaries are invited to make submissions on the proposal.

Visit [www.tect.org.nz](http://www.tect.org.nz) for more information on the proposed changes, including the formal notice of proposal and how TECT beneficiaries can submit their feedback.

Submissions on this proposal will close on Monday 22 March.

8th March 2021

## TECT Consultation Reaches Half-Way Point

Dear TECT Beneficiary,

We're getting in touch to remind you that there are now two weeks for you to submit your feedback on proposed changes to the structure of TECT, in response to the potential sale of Trustpower's Retail Business.

Last week, we held three Consumer Information Sessions, where Trustees provided an outline of the proposal and heard feedback from those of you in attendance.

Thank you to everyone who attended one of these sessions, and those who have submitted feedback via post or online over the last few weeks.

Overall, we've been really pleased with the feedback so far, and the level of engagement on the proposed changes to future-proof the trust and protect the rebate.

We have also updated the [FAQs on our website](#) to further address some of the queries raised at the consumer sessions.

Trustees have been reviewing feedback as it is received and will continue to do so for the remainder of the consultation period.

There are two more weeks of the consultation left, so if you wish to provide us with any feedback, please do so before 4pm on Monday 22 March.

Want more information and to have your say?

TECT Beneficiaries are invited to make submissions on the proposal.

Visit [www.tect.org.nz](http://www.tect.org.nz) for more information on the proposed changes, including the formal notice of proposal and how TECT beneficiaries can submit their feedback.

Submissions on this proposal will close at 4pm on Monday 22 March.

FAQs on the proposal can be viewed [here](#).

Kind regards,

**Wayne Werder**  
General Manager, TECT

**16th March 2021**

# **One week left to have your say about proposed changes to TECT**

Dear TECT Beneficiary,

There is now just one week left for you to submit feedback on proposed changes to the structure of TECT.

Thank you again to all of you who have provided feedback and engaged with this process so far. Trustees continue to review feedback prior to their deliberations once the consultation period is complete.

We've been really pleased with the level of community engagement and support for the process to date and look forward to hearing further feedback over the next week.

A reminder that if you submit feedback, you also have the opportunity to talk to your submission should you wish to during the oral hearing process.

If you do wish to provide us with feedback, either online or by returning your mailed submission form, please do so before 4pm next Monday 22nd March.

Want more information and to have your say?

TECT Beneficiaries are invited to make submissions on the proposal.

Visit [www.tect.org.nz](http://www.tect.org.nz) for more information on the proposed changes, including the formal notice of proposal and how TECT beneficiaries can submit their feedback.

Submissions on this proposal will close at 4pm on Monday 22 March.

FAQs on the proposal can be viewed [here](#).

Kind regards,

Wayne Warden  
General Manager, TECT

22nd March 2021

## Consultation on TECT Proposal closes today

Dear TECT Beneficiary,

We have reached the final day for you to submit feedback on TECT's proposed changes to the structure of the Trust.

The consultation period has run from the 18 February and closes at 4pm today (22 March).

We have received around 700 written submissions to date, and the feedback is encouraging.

We've been very pleased with the engagement of our beneficiaries throughout this process. We had a great turnout at all three of our information sessions, and have had high numbers of submissions both written and online.

Feedback has been positive overall and we thank each and every person who took the time to read the proposal, and provide their views.

The next step is the hearing of oral submissions that will take place this Thursday, where we will hear from submitters who have requested to speak to their submission.

Following the hearing, Trustees will meet for deliberations, and will then make a decision on the final proposal over the next few weeks. Following this decision, we will then make an application to the High Court to independently review the proposal and process.

We will continue to keep you informed when a decision is made, and provide updates on next steps.

### Details of Hearing of Oral Submissions

Submitters who have requested an opportunity to speak to their submissions have been invited to speak at a hearing of oral submissions that will be held:



Please note that all TECT beneficiaries are invited to attend the hearing, but you will only have speaking rights if you have requested to do so as part of your submission.

All submissions are available for review on the TECT website or at the TECT office prior to the hearing date. You can contact TECT on 07 578 5094, or via [info@tect.org.nz](mailto:info@tect.org.nz).

For more information on the TECT proposal, please visit [www.tect.org.nz](http://www.tect.org.nz).

Kind regards,

Bill Holland  
TECT Chair

**7th April 2021**

## **TECT Proposal update**

**Thank you to all consumers who made a submission on the Proposal. The consultation period is now closed. Approximately 800 submissions were received, and trustees heard around 30 verbal submissions on the 25<sup>th</sup> of March. Trustees are currently analysing all submissions and intend to make a decision on the Proposal in mid to late April.**



## TAB 20





# TRUSTPOWER IS CHANGING, SO TECT MUST CHANGE TOO.

Trustpower announced on 28 January 2021 that it is undertaking a strategic review of its retail business, that includes a potential sale. Trustpower's decision means that TECT has to change.

This is because a sale of Trustpower's Retail Business to a third party means that, under the TECT Trust Deed, TECT's beneficiaries will no longer be you - Trustpower's local retail customers. This means that you would no longer be entitled to receive a rebate.

## THE PROPOSAL

Trustees have released a proposal that outlines the changes to TECT's structure needed to meet the purpose of the Trust Deed, and to ensure that the best interests of the Trust and its beneficiaries are protected. This proposal protects the rebate for existing TECT beneficiaries for approximately 30 years. To view the Notice of Proposal, please visit [www.tect.org.nz](http://www.tect.org.nz).

The steps for change include:

### STEP 1

- TECT would retain funds which are sufficient to pay a yearly rebate to all existing beneficiaries (as of Thursday 28 January 2021) for approximately 30 years.
- The rebate will be \$500 a year for the first ten years, and then will increase after that to take account of inflation.
- To receive a rebate a beneficiary must remain a customer of Trustpower or the buyer of the Retail Business (or a subsequent buyer), in the district - subject to limited exceptions. If you leave, the rebate stops.
- New customers and the current customers of the new business do not become beneficiaries.
- On 31 December 2050, TECT must be wound up and its remaining assets will go to the new TECT Community Trust.

### STEP 2

The balance of TECT's funds (including its shareholding in Trustpower) would be transferred to a new long-term community trust focused on grants for local community projects.

## CONSUMER INFORMATION SESSIONS

The Trustees are holding a series of sessions on the proposal. Beneficiaries are invited to attend these sessions to discuss the proposed changes.

<p><b>WED</b></p> <p><b>3</b></p> <p>MARCH</p> <p>6.30pm</p> <p>Club Mount Maungani, 45 Kawaka Street, Mount Maungani.</p>	<p><b>THUR</b></p> <p><b>4</b></p> <p>MARCH</p> <p>2.30pm</p> <p>Tauranga Yacht Club, 90 Keith Allen Drive, Tauranga.</p>	<p><b>SUN</b></p> <p><b>7</b></p> <p>MARCH</p> <p>12pm</p> <p>University of Waikato, Te Manawarao, Level 1 101 Durham Street, Tauranga.</p>
--	---	---

### WANT MORE INFORMATION AND TO HAVE YOUR SAY?

Beneficiaries are invited to make submissions on the proposal.

Visit [www.tect.org.nz](http://www.tect.org.nz) for more information on the proposed changes, including the formal notice of proposal and how TECT beneficiaries can submit their feedback.

Submissions on this proposal will close on Monday 22 March.



Ethan Hepper (left) and Kael McFarlane on the rural stretch of road along which they walk home from school. It takes Kael and Ethan to make the 3.8km journey. PHOTOS: ARIANE MANNING

# Kids barred from school bus by law made in 1904

## Youngsters in rural Kaipara face walking dangerous country roads

Then and now

**1904**  
NZ population: 267,900  
Private cars: 3000  
Open road speed limit: 12km/h

**2021**  
NZ population: 5,122,300  
Private cars: 2,488,219  
Open road speed limit: 100km/h

Hundreds of children living on rural roads near towns are being barred from school buses under a law that hasn't changed since 1904.

Kaipara College students Kael McFarlane and Ethan Hepper, both 13, watch a school bus go past their doors on Inland Rd 3.8km outside Heleavenville, but the bus is only allowed to pick up high-school students if they live more than 4.8km from school.

The road is unsealed, has no footpath and winds over a steep hill between the college and the boys' homes.

Kael sometimes walks 8, talking just under an hour. He has asked if he can ride his bike, but his mother Tracey McFarlane won't let him.

"He nearly gets knocked off," she said. His father Matt Hepper said: "We'd be happy to tell the kids to harden up if it was safe, but it's not safe."

Louise Christie, who lives nearby on the Kaipara Coast Highway and has gathered 868 signatures on a petition to Parliament on the issue, says today's roads are vastly different from the roads of 1904.

"There were no highways, and the few motor vehicles that were in New Zealand had a speed limit of 12km/h," she told Parliament.

"Travel to school mostly involved horse drawn wagons until 1924 when the first motorised school bus was introduced. The children that did walk to school, walked across paddocks."

"Today the speed limit outside Clunie's home is 100km/h."

On Inland Rd, Auckland Transport reduced the limit last year from 100km/h to 60km/h, but, Hepper said, cars and trucks still drive fast, even on the winding road over the McKenzie Hills.

Kael and Ethan were able to get the school bus until this year because primary school students are entitled to free

school buses if they live at least 9.3km from the nearest school.

But now they are secondary students, they must live at least 4.8km away.

A Ministry of Education spokeswoman said the limits were set in the Education Act of 1877, which introduced compulsory education for all children aged 7 to 15 who lived "within the distance of two miles (3.2km) measured, according to the nearest road from a public school."

"An amendment was made in 1904 to recognise the different distances per age group," the ministry said.

"At the time, those settings reflected that walking distance was likely to represent a barrier to rural children attending schools."

"While there has been no change to the criteria for over 100 years, people have greater access to transport, more vehicle options and improved roading than was available in the early 1900s."

In the Kaipara area, school buses used to pick up some students within the specified limits because they had empty seats, but they stopped doing that on the Inland Rd route last year because of population growth.

Kaipara College principal Steve McCracken said hundreds of students at Kaipara alone have been barred from the buses.

"Our roll is up nearly 30 per cent in the past three years - something that has a major impact on the funding that we get, but that doesn't equate to the service we are able to provide for buses," he said.

Andrew Clarke, principal of Kaipara College School, which manages the Kaipara school transport network, said Inland Rd was "just one example of a significant number of roads across our transport network where the ministry's funding criteria does not take into account accessibility or safety issues."

"We... have been petitioning govern-

ment for the past two years for a review of the funding model to reflect the differences in rural/urban situations," she said.

Students in urban areas do not get free school buses because public transport exists, but most public transport operators give children discounts - between 42 and 69 per cent off adult fares on Auckland Transport buses.

In rural areas, the police force parents inside the school bus limits to drive their children to and from school.

On his first day at Kaipara College, Ethan's teacher aide drove him home.

Christie, who has also started a Facebook campaign on the issue, says her father to drive from Heleavenville to pick her children up in the morning, drive them to school, drive them back home at night and then drive back to town.

The head of the Ministry of Education's education infrastructure service Kim Shannon said children with special needs could get exemptions and invited the Heppers to apply for Ethan, who suffered a brain injury in a dirt bike accident two years ago. But Matt Hepper said Ethan "doesn't want special treatment."

"There is no current mandate to change the school transport policy," she said.

The ministry has budgeted \$821 million for school transport this year and provides free buses for about 100,000 of the country's 826,000 schoolchildren.

# Red Fox jury told of earlier conviction

Chelsea Boyle

One of the men accused of the fatal 1987 Red Fox Tavern robbery had earlier been convicted of an aggravated robbery in Auckland.

Mark Joseph Hoggart, 60, and a man with name suppression are on trial for the aggravated robbery and murder of publicist Chris Bush.

It is alleged cheques and cash to the value of just over \$36,000 were stolen in the armed hold-up at the tavern in Maramara, Waikato.

Both accused deny the charges.

Yesterday the jury learned the man with name suppression had been jailed for an aggravated robbery in Auckland in the early 1980s.

One of his associates in the crime - Charles Emile Augustus Ross - has been giving evidence in court.

Before he took the stand however, the jury heard an account of the earlier robbery.

The defendant with name suppression had two 12-gauge double-barrelled

shotguns saved down with a hacksaw, the court was told.

Hoggart and another associate had planned to wait until late, when a staff member was due to open a vault to store the takings.

The group watched the guests leave, until only socialising employees remained.

The accused was wearing steel-capped boots, black corduroy trousers and three jerseys under a track suit top.

The day before he had cut the sleeves of an old purple jersey, fashioning them into two blades for himself and Ross.

The third man walked outside.

Once disguised and armed, the pair confronted a barman as he came out through a locked door.

Hoggart hit the barman on the side of his face with the barrel of his shotgun.

With a shotgun to his back, the barman was forced back inside.

A receptionist and the barman were then forced to lie on the ground, the latter "forcibly" kicked by one of the two offenders.

The barman and receptionist were marched at gunpoint to an upstairs bar where six or seven employees were playing pool. All were marooned single-file back down.

The accused demanded the duty manager open the safe - but in his fear he forgot the combination.

Ross struck him over the head with the butt of the shotgun. The impact caused him to fire. A shot smashed into the ceiling, shattering a fluorescent light bulb over the employees.

When the vault was finally opened, the robbers made off with \$15,424.22, including \$9,266.60 in cash. Their associate drove the pair away from the crime scene.

The accused threw some of the items off a bridge. The bullets were burned, but Ross used his share to buy a \$4800 Triumph Trident motorcycle.

All were soon arrested and admitted their roles.

The lengthy trial, before the jury and Justice Mark Woodford, continues in the High Court at Auckland.

# TRUSTPOWER IS CHANGING, SO TECT MUST CHANGE TOO.

Trustpower announced on 28 January 2021 that it is undertaking a strategic review of its retail business, that includes a potential sale. Trustpower's decision means that TECT has to change.

This is because a sale of Trustpower's Retail Business to a third party means that, under the TECT Trust Deed, TECT's beneficiaries will no longer be you - Trustpower's local retail customers. This means that you would no longer be entitled to receive a rebate.

## THE PROPOSAL

Trustees have released a proposal that outlines the changes to TECT's structure needed to meet the purpose of the Trust Deed, and to ensure that the best interests of the Trust and its beneficiaries are protected.

This proposal protects the rebate for existing TECT beneficiaries for approximately 30 years. To view the Notice of Proposal, please visit [www.tect.org.nz](http://www.tect.org.nz).

The steps for change include:

### STEP 1

- TECT would retain funds which are sufficient to pay a yearly rebate to all existing beneficiaries (as of Thursday 28 January 2021) for approximately 30 years.
- The rebate will be \$500 a year for the first ten years, and then will increase after that to take account of inflation.
- To receive a rebate a beneficiary must remain a customer of Trustpower or the buyer of the Retail Business (for a subsequent buyer), in the district - subject to limited exceptions. If you leave, the rebate stops.
- New customers and the current customers of the new business do not become beneficiaries.
- On 31 December 2050, TECT must be wound up and its remaining assets will go to the new TECT Community Trust.

### STEP 2

The balance of TECT's funds (including its shareholding in Trustpower) would be transferred to a new long-term community trust focused on grants for local community projects.

## CONSUMER INFORMATION SESSIONS

The Trustees are holding a series of sessions on the proposal. Beneficiaries are invited to attend these sessions to discuss the proposed changes.

<p><b>WED</b> <b>3</b> MARCH</p> <p>6.30pm Club Mount Maunganui 45 Kawaka Street, Mount Maunganui</p>	<p><b>THUR</b> <b>4</b> MARCH</p> <p>2.30pm Tauranga Yacht Club, 90 Keith Allen Drive, Tauranga</p>	<p><b>SUN</b> <b>7</b> MARCH</p> <p>12pm University of Waikato, Te Manawao, Level 1 101 Durham Street, Tauranga</p>
---	---	---

### WANT MORE INFORMATION AND TO HAVE YOUR SAY?

Beneficiaries are invited to make submissions on the proposal. Visit [www.tect.org.nz](http://www.tect.org.nz) for more information on the proposed changes, including the formal notice of proposal and how TECT beneficiaries can submit their feedback.

Submissions on this proposal will close on Monday 22 March.



# Pie Awards back on the menu

After an unscheduled year off, the largest and longest running food competition in New Zealand is back.

Pie lovers around New Zealand were devastated when the 24th Bakels NZ Supreme Pie Awards was postponed due to Covid-19; so excitement is already building among bakers as to who might take out the Supreme Award this year.

Patrick Lam, aka the Pie King of Tauranga's Patrick's Pies Goldstar Bakery, has a lot at stake. He's the current reigning champion, having won seven Supreme Pie Awards, and in 2020 he claimed the first Bakels Legendary Sausage Roll prize to prove he still has what it takes.

NZ Bakels managing director Brent Kersel says last year it was like the whole nation let out a sigh of disappointment when the competition was postponed.

"We even had Seven Sharp, on their own initiative, trying to create a mini pie awards to help ease the disappointment," says Brent. "New Zealanders love their pies and it was



Bakels NZ Supreme Pie Awards celebrity chef judge Gareth Stewart, Lay Phan Ho (Patrick's wife), Patrick Lam and NZ Bakels managing director Brent Kersel. Photo: Bakels NZ



## BUSINESS NEWS

hard enough that the lockdowns closed their favourite bakeries without losing the Pie Awards as well.

"This year we're thinking positively about how much as a country we have to be thankful for, and the Bakels NZ Supreme Pie Awards helps celebrate that. So let's find the best pie in the country and get everyone to try it!"

"We know people will want to."

Bakels NZ Supreme Pie Awards competition dates:

- May 3 - Entries open
- June 24 - Entries close at 5pm
- July 22 - Judging Day
- July 27 - Awards Night

# New TECT proposal makes perfect sense

Last week's announcement of the proposed changes to the Tauranga Electricity Consumer Trust is important from a regional, economic perspective.

Readers will probably be aware that Trustpower recently announced



## PRIORITIES WITH NICEL TUTT

Chief executive of Priority One

a review of their retail business, with the view to a possible sale.

The prospect of this sale means that TECT needs to consider the structure of the trust in future.

TECT exists for the benefit of consumers of Trustpower living in Tauranga or the Western Bay, and a sale means that those consumers no longer exist. This frustrates the intent of the trust, so action to change the trust is required. The trust needs to benefit future generations, so winding up and distributing the proceeds isn't an option.

The direction that TECT trustees have taken in the proposal is an entirely sensible one in my view. Essentially, the trust will be split into two parts; one to provide the rebate 'cheque' to existing Trustpower customers in

years to come, and the other to support wider community services and projects.

The structure is a similar set-up to the current one, but the sinking lid nature of the Trustpower customer base means that community investments will be able to be strengthened in future.

The proposal balances the needs of all parties well. The prospect of additional support for community projects is heartening. A fast-growing city like Tauranga needs strong investment in all forms of infrastructure, so that we can continue to be a great place to live.

I have no doubt that the council changes that we have seen during the last few months will be positive, and unlock much-needed investment for the city.

I would also expect 'hard' infrastructure that supports transport, water and housing to become the highest priorities.

TECT plays a valuable role by supporting community-based projects, often with a social or environmental benefit that might not attract funding from other sources.

The prospect of increased investment in these areas is much needed, and will go a long way to strengthening the quality of living for people in our city.

That is a real positive for businesses and the community in general.

## MARGARET'S GOLDEN TOURS

**2021 SOUTH ISLAND TOURS**

20 DAYS - 11 March 2021 COST \$4,050

19 DAYS - 15 October 2021 COST \$4,450\*  
\*\$165pp FAREWELL SPIT TOUR INCLUDED IN COST

**2021 BAY OF ISLANDS TOUR**

14 DAYS - 29 April 2021 COST \$3,500

Phone: 06 357 3619 Mob: 027 269 4277  
Email: [margaretjones13@yahoo.com](mailto:margaretjones13@yahoo.com)

Cost of tour based on twin share • For an itinerary please ring MARGARET

**TOLL FREE 0800 77 00 70**

[www.margaretsgoldentours.com](http://www.margaretsgoldentours.com)

## Together we've got this!

Need a hand to reach your business goals? We have the solutions to support and champion yours. Let's get together and build better business... join us now!

NZ CHAMBERS OF COMMERCE  
TAURANGA  
BUSINESS VITALITY

[tauranga.org.nz](http://tauranga.org.nz)

Working together with Mount Classic Tours

## TRUSTPOWER IS CHANGING, SO TECT MUST CHANGE TOO.

Trustpower announced on 28 January 2021 that it is undertaking a strategic review of its retail business, that includes a potential sale. Trustpower's decision means that TECT has to change.

This is because a sale of Trustpower's Retail Business to a third party means that, under the TECT Trust Deed, TECT's beneficiaries will no longer be you - Trustpower's local retail customers. This means that you would no longer be entitled to receive a rebate.

### THE PROPOSAL

Trustees have released a proposal that outlines the changes to TECT's structure needed to meet the purpose of the Trust Deed, and to ensure that the best interests of the Trust and its beneficiaries are protected. This proposal protects the rebate for existing TECT beneficiaries for approximately 30 years.

To view the Notice of Proposal, please visit [www.tect.org.nz](http://www.tect.org.nz).

The steps for change include:

#### STEP 1

- TECT would retain funds which are sufficient to pay a yearly rebate to all existing beneficiaries (as of Thursday 28 January 2021) for approximately 30 years.
- The rebate will be \$500 a year for the first ten years, and then will increase after that to take account of inflation.
- To receive a rebate a beneficiary must remain a customer of Trustpower or the buyer of the Retail Business (or a subsequent buyer), in the district - subject to limited exceptions. If you leave, the rebate stops.
- New customers and the current customers of the new business do not become beneficiaries.
- On 31 December 2050, TECT must be wound up and its remaining assets will go to the new TECT Community Trust.

#### STEP 2

The balance of TECT's funds (including its shareholding in Trustpower) would be transferred to a new long-term community trust focused on grants for local community projects.

### SUBMIT FEEDBACK

Beneficiaries are invited to make submissions on the proposal. Visit [www.tect.org.nz](http://www.tect.org.nz) for more information on the proposed changes, including the formal notice of proposal and how TECT beneficiaries can submit their feedback.

Submissions on this proposal will close on Monday 22 March.



New Zealand speed climbing record boulder Sarah Tetzlaff, watched by Abby Gebert. Photo: John Ezzon.

A tall wall towering above Blake Park is at the centre of a national event today, as speed climbers attempt to take out some top prizes.

"We're looking at having about 70 competitors," says Climbing NZ president Richard Waldin.

"It will be fantastic. A lot are coming up from Christchurch and Wanaka."

Open to all grades and all climbers, the event will crown the New Zealand national champions, as well as provide a chance for national speed climbing records to be set.

Rob says Friday's speed climbing competition at Mount Maunganui will be followed with a lead competition in Rotorua on Saturday and Sunday.

"We've tried to organise the speed competition so that competitors from around the country who will be already in the Bay of Plenty for the Rotorua competition can do this as well," says Rob Moore from Bay of Plenty Sport Climbing.

"We've only had the wall up at Blake Park for two years, and we're 50 per cent up on

competitors from last year."

Richard says that speed is quite a new event for New Zealanders.

"And we're finding our way in finding athletes who may want to specialise in that as a discipline," he adds. "For the Paris Olympics, speed will become a separate event."

The Tokyo Olympics will debut sport climbing this year. It will be held as a combined event with lead climbing, speed climbing and bouldering.

"It's nice to see that speed is having its own medal for Paris," says Rob, who is hoping to see some growth over the next couple of years in the sport. "We have some of New Zealand's top world cup climbers here competing this weekend."

Athletes who are considering speed as part of any international competition in 2021 will be expected to be climbing on Friday. This includes competing in speed at World Cups, Youth World Championships and Oceania events.

Athletes are grouped according to age. The competition on Friday, March 12, and begins at 9am with warm ups and practice climbs.

### THE PERFECT OFFICE AT HOME



## BECOME YOUR OWN LANDLORD

Move your business home!

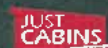
Forget about the commute to work or paying high commercial rents! With a fully insulated and tastefully decorated cabin at home, you can be at work in seconds and then at the end of the day, lock it up and step into your home to be with the family. Just Cabins is locally owned and operated, so visit our website or call us today about making that move. No stress and no hassles!

RENT A SIZE TO SUIT

STANDARD  
3.6m x 2.4m

LARGE  
4.2m x 2.4m

EXTRA LARGE  
4.6m x 2.4m



0800 28 94 96  
[JUSTCABINS.CO.NZ](http://JUSTCABINS.CO.NZ)

# SALE

# 25% off

Resene Premium Paints,  
Wood Stains, Primers, Sealers,  
Wallpaper, Decorating Accessories  
and Cleaning Products

Visit your local Resene ColorShop!

Tauranga: 47 Waipi Rd, (07) 578 4169  
Mt Maunganui: 91 Newton St, (07) 572 0044

## Resene

the paint the professionals use

or shop online at [shop.resene.co.nz](http://shop.resene.co.nz)

Discount off the normal retail price of Resene premium paints, wood stains, primers, sealers, wallpaper, decorating accessories and cleaning products, valid 12 April 2021. Available only on Resene product categories and participating retailers. Excludes other Resene products or parts orders. Must be 18 years or older. Offer ends 31 March. Valid only with cashless methods (POS packages). Not available in conjunction with other offers, promotional offers, vouchers or other offers. Excludes some 1L, 5L, 10L, 20L, 50L, 100L, 200L, 500L, 1000L, 2000L, 5000L and 10000L tins.

## TRUSTPOWER IS CHANGING, SO TECT MUST CHANGE TOO.

Trustpower announced on 28 January 2021 that it is undertaking a strategic review of its retail business, that includes a potential sale. Trustpower's decision means that TECT has to change.

This is because a sale of Trustpower's Retail Business to a third party means that, under the TECT Trust Deed, TECT's beneficiaries will no longer be you - Trustpower's local retail customers. This means that you would no longer be entitled to receive a rebate.

### THE PROPOSAL

Trustees have released a proposal that outlines the changes to TECT's structure needed to meet the purpose of the Trust Deed, and to ensure that the best interests of the Trust and its beneficiaries are protected. This proposal protects the rebate for existing TECT beneficiaries for approximately 30 years.

To view the Notice of Proposal, please visit [www.tect.org.nz](http://www.tect.org.nz).

The steps for change include:

#### STEP 1

- TECT would retain funds which are sufficient to pay a yearly rebate to all existing beneficiaries (as of Thursday 28 January 2021) for approximately 30 years.
- The rebate will be \$500 a year for the first ten years, and then will increase after that to take account of inflation.
- To receive a rebate a beneficiary must remain a customer of Trustpower or the buyer of the Retail Business (or a subsequent buyer), in the district - subject to limited exceptions. If you leave, the rebate stops.
- New customers and the current customers of the new business do not become beneficiaries.
- On 31 December 2050, TECT must be wound up and its remaining assets will go to the new TECT Community Trust.

#### STEP 2

The balance of TECT's funds (including its shareholding in Trustpower) would be transferred to a new long-term community trust focused on grants for local community projects.

### SUBMIT FEEDBACK

Beneficiaries are invited to make submissions on the proposal. Visit [www.tect.org.nz](http://www.tect.org.nz) for more information on the proposed changes, including the formal notice of proposal and how TECT beneficiaries can submit their feedback.

**Submissions on this proposal will close on Monday 22 March.**



# Shared stories help healing

'Six months after we lost Mike I couldn't stop bloody crying'



Shauni James

**Advisory:** This article mentions suicide and may be distressing to some readers.

**R**oberta Jean John Richards holds a family photo in his hands.

Grief and trauma lie just below the surface as he explains that just two years after the family photo was taken in Adelaide, two loved ones pictured in the frame - his son and his grandson - would be dead.

Richard's 6-month-old grandson, Henare, stopped breathing at his home in Adelaide two years ago.

By the time the ambulance got him to the hospital, only a machine was keeping him alive.

Richard said the decision was made to turn off the machine and let Henare go.

Not quite a year later, Richard's son, Mike, who was Henare's father, took his own life. His suicide came just days before New Zealand went into lockdown due to the Covid-19 pandemic.

"For me and my family it changed everything, and even now it's all surreal."

Richard said they had to cremate his son in Adelaide because they weren't able to fly him home due to Covid.

"We had both their ashes in his son's and his grandson's suit here and we buried them

up at Kausea Cemetery by my grandfather."

"The fact they are at Kausea now is very comforting for us. We didn't have a choice about the cremation and would have preferred to bury, but we were forced pretty quickly to make the decision."

Only about 15 members of the immediate family attended his son's service because of the Covid-19 restrictions at the time.

"We've had to soldier on and that's really difficult."

"For our family, now being part of the statistics it's a pretty profound thing to be involved with and it's such an awful situation ... there's so much hurt and regret."

Monday marked the one-year anniversary of Mike's



John's son Mike Richards.

Photo /Supplied

death. He would have turned 35 two weeks ago.

Richard said his son was a fun, talented and social man.

"My son was a very talented sportsman - he was a great

### The details

- **What:** Healing Wānanga - for whānau bereaved by suicide
- **When:** March 27, 9am and March 28, 10am
- **Where:** Tānwharopū Marae
- **Cost:** Free
- **Contact:** Maitani Arid de Roo (022) 820 9034, Sissy Taylor (020) 048 3776
- **Register:** Link at the Facebook event page Healing Wānanga - for whānau bereaved by suicide

rugby and rugby league player.

"He's a fun person and a social butterfly. He had a lot of friends that he'd made over the years."

He said he and his son had also worked in the same industry - fire protection.

Richard said after talking with a doctor, he did an eight-week course with Sissy Taylor at Family Focus in Pukekohe St.

"Six months after we lost Mike, I couldn't stop bloody crying."

"Being with other families in Rotorua who were going through the same course was fantastic."

"You realise we are all vulnerable to suicide and it can happen to any family. Suicide doesn't care, it takes whoever is willing to go there."

"You come out of the course with a lot of valuable tools."

"Each person's story is different and unique, but the outcome is the same - devastation and a sense of loss."

"I think with suicide there's an element of shame in it, and I think people will avoid talking about it and suffer in silence."

He said suicide needed to be spoken about, and events

### NZ'S LEADERS IN

## Power Free Sewage Treatment

Are YOU Wanting Power Free Sewage Treatment?

- ✓ No Power in treatment processes
- ✓ Nature's Active 'Bio-system'
- ✓ Odourless, quiet operation
- ✓ Extremely low maintenance needs
- ✓ Modular with low site impact
- ✓ Free Onsite Assessments



Call us for a free info pack  
**0800 628 356**  
[www.naturalflow.co.nz](http://www.naturalflow.co.nz)

Tuesday, March 23 2021

Nation

www.bayofplentytimes.co.nz 7

# Former host backs TV crime show

Police Ten 7 critics should try to solve problems rather than looking at ways to hide them, says ex detective

**F**ormer *Police Ten 7* host Graham Bell has defended the show after calls were made for it to be scrapped and he's argued that critics should examine the causes of crime instead.

Bell spoke to Newsstalk 2B's Kerre McIvor yesterday after Auckland councillor Eieso Collins called for TVNZ to stop broadcasting the high rating reality show.

Collins says it feeds on racial stereotypes of young brown men being brutish and described it as a 'chewing gum TV show'.

"Crime and all its uncomfortable and unfortunate truths are not going to disappear if they get rid of *Ten 7*, are they?" Bell told McIvor.

"We need to face and accept there is a problem instead of looking for ways to hide from it, that's my approach."

Asked how the show decided on which criminals to feature, Bell replied: "The police don't select who they are looking for. The people who commit the crimes are the ones that select themselves to be sought."

"There is no bias towards any colour, race, creed or any other type of person. It's whoever is wanted today is who goes on the show. It's as simple as that."

Asked, based on his experience in the police, whether there was an inherent mistrust towards Māori and Pasifika, Bell replied: "It's very difficult not to develop a slight attitude to a group of people that are constantly offending."

"It's an unfortunate fact that certain sectors of our society are grossly over-represented in the crime statistics," he said.

"I don't have the answer for that but cancelling a show like *Police Ten 7* is not going to help."

Bell, who hosted the show for more than 12 years, told McIvor: "Police work is tough. It requires courage and persistence in the face of a lot of criticism. This sort of criticism that is floating around at the moment is far from helpful, you have to say."

"I would argue that Mr Collins is approaching this from the wrong end. Perhaps he should be looking at why we've got this problem in our society."

"Does he want police to ignore crime if it is committed by brown people?"

Bell said New Zealand needs to focus on the social drivers of crime and ignoring the over-representation of Māori and Pasifika in crime statistics is just ignoring

cold, hard uncomfortable truths. There have been generations of familial inadequacies by sectors of our society have

created a lack of aspiration, a lack of self-worth, a lack of self-respect and we see it everywhere," Bell said.

"It's not only in crime, we see it right through society."

"There are sectors of our society who are over-represented in our statistics and everybody in society would be better off if that were not the case."

NZME has approached TVNZ and *Police Ten 7* producer Screentime for comment on this story.

Earlier yesterday, Race Relations Commissioner Mung Foon added his voice to calls to end the programme, saying that the show reflects racist policing in New Zealand.

Speaking to Newsstalk 2B's Mike Hosking, Foon said the show did "target more brown people than white people so therefore it is racist".

Foon cited evidence that Māori and Pasifika were overwhelmingly more likely to be subject to force from the

police, such as use of dogs and Tasers. Asked by Hosking if the statistics he cited reflected more on the actions of those being arrested, Foon held firm.

"The police are racist," he said. He also defended the show, saying *Ten 7* was a "good programme" that helped communities to solve crime but argued that they need to "proportionally fix the fixing of brown people".

Asked if a quota system would work, Foon agreed.

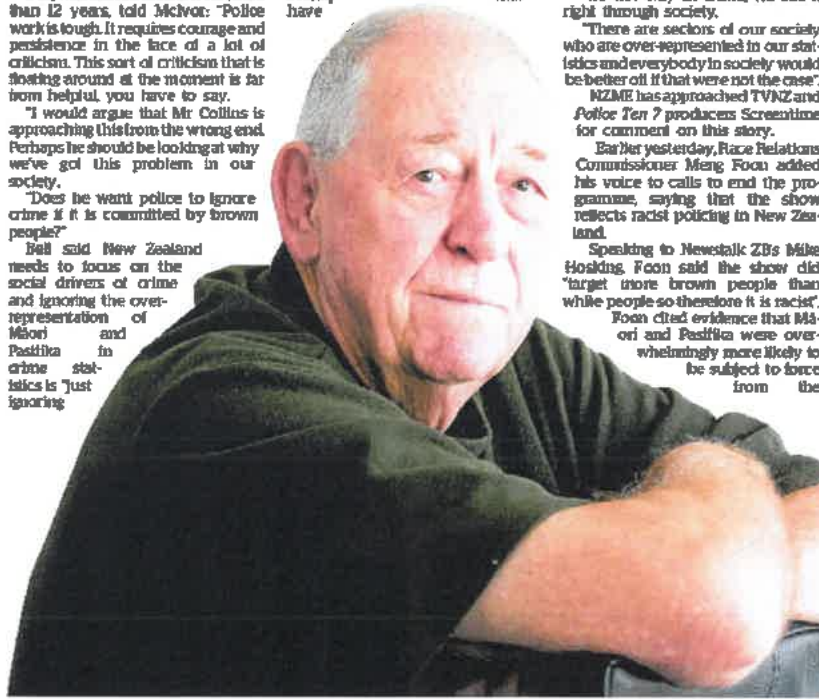
Earlier, Eieso Collins appeared on 2B's *Early Edition* to expand on his recent comments.

He said that promotion of the show focused on young brown people and invited the audience to watch their encounters with the police for their entertainment.

He said that his work in the South Auckland community showed the value of working with the police and that the show didn't play apart in that.

"Let's show the New Zealand we're becoming today."

"I'm just putting out stuff that follows the Facebook algorithm of reinforcing what we already believe then we're not getting a true picture of New Zealand, a diverse New Zealand with a range of cultures and languages and its time now for all of that representation to be shown on TV," Collins said.



Retired Detective Inspector Graham Bell. Photo: P/E

# WILL JOHNSTON



LIVE & LOCAL IN THE BAY OF PLENTY

WEEKDAYS 9 – 3PM

95.0

THE HITS

BAY OF PLENTY

LISTEN ON iHeartRADIO thehits.co.nz

## Hearing of TECT Consumer Submissions

TECT will be hearing submissions on proposed changes to the structure of TECT following a consultation period that was undertaken between 18 February and 22 March 2021.

TECT's proposal outlined the changes to TECT's structure needed to meet the purpose of the Trust Deed, and to ensure that the best interests of the Trust and its beneficiaries are protected. This proposal protects the rebata for existing TECT beneficiaries for approximately 30 years.

Approximately 700 written submissions were received by the closing date of Monday 22 March 2021.

---

Submitters who have requested an opportunity to speak to their submissions have been invited to speak at a hearing of oral submissions that will be held:

THUR  
25  
MARCH

9am – 5pm

Club Mount Maunganui,  
45 Kawaka Street,  
Mount Maunganui

---

Please note that all TECT beneficiaries are invited to attend the hearing, but you will only have speaking rights if you have requested to do so as part of your submission. All submissions are available for review on the TECT website or at the TECT office prior to the hearing date. You can contact TECT on 07 578 5094, or via [info@tect.org.nz](mailto:info@tect.org.nz)

For more information on the proposal please visit [www.tect.org.nz](http://www.tect.org.nz)



## TAB 21







## Have your say – TECT Beneficiary Feedback Form

TECT beneficiaries\* who would like to give feedback on the proposal are invited to make a written submission by 4pm 22 March 2021. We request that you indicate if you would like to speak to your submission.

Please note that all submissions, including the name of the submitter, will be made available to beneficiaries. However, no contact details will be made available.

\*A TECT beneficiary is a Trustpower power account holder who is situated in the Tauranga City or Western Bay of Plenty District (the old Tauranga Electric Power Board area).

Name:

---

Email address:

---

Postal address:

---

Daytime phone number:

---

Trustpower account number:

---

My feedback is:

---

---

---

---

---

---

---

---

I wish to speak to my feedback at a hearing on either 25 March or 26 March 2021: [Y/N]

(If yes, TECT will be in contact with further details, including hearing time and location).

---

To submit your feedback please:

Send feedback form to:

TECT Submissions  
PO Box 637  
7th Avenue  
Tauranga 3144

Scan and email to:

submissions@tect.org.nz

Submit online at:

[www.tect.org.nz/submissions](http://www.tect.org.nz/submissions)



## TAB 22



# Memorandum

Date: 15 February 2021

To: The Consumers as referred to in the TECT Trust Deed

From: Jarrod Walker  
Direct: +64 9 357 9098  
Mobile: +64 21 986 744  
Email: jarrod.walker@chapmantripp.com  
Ref: 100414205/8257440.3

## Potential restructuring of TECT

### Introduction

- 1 We have been engaged to advise the Trustees of Tauranga Energy Consumer Trust (**TECT**) in respect of matters arising from the strategic review by Trustpower Limited (**TPW**) of its retail consumer business.
- 2 Consequential upon the strategic review or possible sale by TPW of its retail consumer business, the Trustees propose a restructuring of TECT. Prior to any such restructuring being undertaken, the Trustees propose to undertake a Consumer Consultative Procedure and apply (if the restructuring proposal proceeds thereafter) for directions from the High Court under the Trusts Act 2019. The Trustees have requested that we provide Consumers with a summary of the submissions we would put before the Court in support of the proposed restructuring, in that application to the Court for directions.

### Non-reliance

- 3 This memorandum does not constitute legal advice to Consumers. Our engagement as legal advisers is with the Trustees and nothing in this memorandum should be relied upon as legal advice to the Consumers or any other persons. Consumers should, if they wish, obtain their own legal advice in respect of matters referred to in this memorandum.

### Background understandings

- 4 The background understandings on which this memorandum is based are as set out in the Consumer Information Memorandum dated on or about the date of this memorandum. We refer Consumers to that document for a description of the strategic review announced by TPW and the potential sale of TPW's retail consumer business, and the proposed TECT restructuring.

### Summary of approach on directions application

- 5 The application for directions that the Trustees would make to the Court can be summarised as set out below. The application would be tailored to meet the precise facts as they turn out to be at the time, including importantly as to whether a sale of the TPW retail consumer business has been announced or whether it remains only a possibility arising out of the strategic review of the business by TPW.



### 5.1 Need for proposed TECT restructuring:

- (a) If the strategic review of TPW leads to a sale of the TPW retail consumer business to a third party purchaser, this would be a change of such substance to the circumstances surrounding TECT that its purpose and objectives would be frustrated. This is because:
- (i) The beneficiaries of the Trust Deed are defined by reference to "Consumers" of the "Company". Any purchaser of the TPW retail consumer business cannot be regarded as the "Company" for the purposes of the definition of that term in the TECT Trust Deed. The definition of "Company" in clause 1.1 of the Trust Deed refers to TPW and includes the words "any company arising out of any reconstruction, amalgamation or merger of the Company". A purchaser of the retail consumer business from TPW cannot be regarded as the Company for the purposes of the definition.
  - (ii) As such, current retail Consumers who transfer to a purchaser of TPW's retail consumer business as part of a sale of that business would not be Consumers following that sale and transfer, and would not be entitled (without amendment to the Trust Deed) to rebates or other benefits under the Trust Deed.
  - (iii) It follows that consequential upon any sale and the transfer of the current retail Consumers to a purchaser, the Consumer base served by the Trust would be limited to approximately 150 commercial and industrial electricity customers. This contrasts with the current Consumer base, with approximately 49,000 retail customers of TPW in the TECT District (amounting to approximately 53,000 individual connections).
- (b) In light of that frustration of the Trust that would occur if there was such a sale by TPW, the Trustees have considered the options available to them. These include winding up the Trust (with consequential resettlement or distribution of the assets in a manner to be determined), resettling the Trust and/or varying the Trust.
- (c) If the strategic review does not immediately lead to a sale of the retail consumer business, the Trustees are nevertheless of the view that they should proceed with the proposed restructuring of TECT, subject to undertaking a Consumer Consultative Procedure to obtain Consumer feedback in respect of their preferred restructuring option. Restructuring TECT is still, in the Trustees' view, the most prudent course of action to protect TECT from future uncertainty raised by the TPW strategic review.

### 5.2 Powers of the Trustees to undertake the proposed restructuring:

- (a) The Trustees have the powers in the Trust Deed to undertake the settlement of the new charitable trust, the transfer to that trust of



TECT's TPW shares and the variations to the Trust Deed which are necessary for the proposed restructuring of TECT including in particular to the rebate arrangements. Those powers are a combination of the power to vary the Trust Deed (clause 13), the "dispositive" powers, i.e. the powers to distribute by way of payment, application or allocation income and capital (clauses 5 and 6) and the power to wind up the Trust (clause 14). There is no express power of resettlement in the Trust Deed, but that power is incumbent on the Trustees by virtue of their broad dispositive powers and the winding up power.

- (b) The express provisions of a trust deed must be considered in accordance with the principles of interpretation of trust deeds, to confirm that there are no implied restrictions on those powers which would prevent the Trustees undertaking the proposed restructuring. The following are the relevant principles of interpretation of trust deeds:
- (i) Deeds are to be interpreted from a standpoint that is "practical and purposive, rather than detached and literal".<sup>1</sup> The factual matrix within which the relevant trust was formed is relevant.<sup>2</sup> Trust deed provisions are to be interpreted objectively in the context of the whole document, relevant statutory background and factual matrix.<sup>3</sup>
  - (ii) A court, when interpreting a trust deed, is required to construe each provision according to its natural meaning and give provisions "ample operation" rather than approach interpretation in a narrow way or limited by reference to historical presumption.<sup>4</sup> The test of what is intended by the settlor or in the "reasonable contemplation of the parties" is an objective question, to be answered by ascertaining the actual meaning of words used in their context.<sup>5</sup> The search for 'intention' in relation to trusts, as with contracts, is for the intention as revealed in the words used by the parties. The expressed intention of the parties is to be found in the answer to the question, "What is the meaning of what the parties have said?", not to the question, "What did the parties mean to say?".<sup>6</sup>
  - (iii) Interpretation of trust deeds should be tailored having regard to the type of trust involved. In particular, interpretation should

---

<sup>1</sup> *Re Courage Group's Pension Scheme* [1987] 1 All ER 538, [1987] 1 WLR 495.

<sup>2</sup> *Boat Park Limited v Hutchinson* [1999] 2 NZLR 74.

<sup>3</sup> *Pryor v Bulley* [2013] NZCA 559.

<sup>4</sup> *Kearns v Hill* (1990) 21 NSWLR 107.

<sup>5</sup> *PNPF Trust Co Ltd v Taylor* [2010] EWHC 1573 (Ch).

<sup>6</sup> *Mercanti v Mercanti* [2016] WASCA 206.





reflect the modern commercial context of many trusts.<sup>7</sup> Energy trusts have been recognised as having a commercial aspect that is relevant to matters of interpretation.<sup>8</sup>

- (iv) The test of what is intended by the settlor or in the “reasonable contemplation of the parties” is an objective question, to be answered by ascertaining the actual meaning of words used in their context.<sup>9</sup>
- (c) It is clear in applying these principles of interpretation to the express provisions of the TECT Trust Deed that the Trustees have the necessary powers to effect the restructuring. There are no express or implied fetters on the power to vary the Trust Deed (clause 13), the “dispositive” powers (clauses 5 and 6) and the power to wind up the Trust (clause 14) which are relevant to the proposed restructuring and which would prevent the Trustees from effecting that restructuring, assuming the undertaking of a Consumer Consultative Procedure as required by the Trust Deed including clauses 13.2 and 9.3 thereof.

### 5.3 Duties of the Trustees relevant to exercise of powers:

- (a) In proposing to exercise their powers under the Trust Deed the Trustees have been mindful of their fiduciary duties to which they are subject as a consequence of their trusteeship:
  - (i) The duties having most relevance to the current issues are the duties to act in the best interests of the Consumers and to act for a proper purpose. In ascertaining what is in the best interests of Consumers and is for a proper purpose, the Trustees have had regard to the line of case law to the effect that a variation that alters the core basis of the trust can be said to be an attack on the “substratum” or core essence of the trust. Such issues were considered in or relevant to the prior energy trust cases in New Zealand, namely *Cave and Brown v Berkett*<sup>10</sup> (the Hutt Mana Energy Trust case), *Re Hennessy*<sup>11</sup> (the Eastern Bay Energy Trust case) and *Re Andrews*<sup>12</sup> (the South Canterbury Power Trust case). The Trustees have also considered more recent case law from other Commonwealth jurisdictions which has favoured an analysis weighted to the “proper construction” of the relevant

---

<sup>7</sup> *Harrison v Harrison* [2015] NZHC 2935.

<sup>8</sup> *Re applications by Andrews* HC Christchurch M5/02, 21 June 2002 per Pankhurst.

<sup>9</sup> *PNPF Trust Co Ltd v Taylor* [2010] EWHC 1573 (Ch) (a decision of the High Court of England and Wales).

<sup>10</sup> (2001) 1 NZTR 11-010 (High Court Wellington, Wild J).

<sup>11</sup> (2006) 2 NZCCLR 1,210 (High Court Rotorua, Keane J).

<sup>12</sup> (2002) 1 NZTR 12-003 (High Court Christchurch, Panckhurst J).



trust deed, applying the principles of interpretation of trust deeds described above.<sup>13</sup>

- (ii) Taking into account all relevant factors, and having regard to the need to undertake a restructuring as a consequence of the announced strategic review of its retail consumer business by TPW and the potential for TPW to sell that business shortly or in the future, the Trustees are satisfied that they are acting in the best interests of the Consumers and for a proper purpose in recommending to Consumers (by means of the Consumer Consultative Procedure) the proposed restructuring (including the necessary variations to the Trust Deed), and the subsequent application to Court for directions should the Trustees proceed with the restructuring after the Consumer consultation. As described further below, the Trustees believe that an application to Court for directions is prudent given the “momentous nature” of the decision to be made and is in the interests of the Consumers as beneficiaries.

#### 5.4 Procedure for Court application and Consumer Consultative Procedure:

- (a) Such directions of the Court would be sought under section 133 of the Trusts Act 2019 (comparable to section 66 of the Trustee Act 1956) which came into force on 30 January 2021, to the extent necessary under section 130 of the new Trusts Act (comparable to section 64 of the Trustee Act 1956) and/or pursuant to the inherent jurisdiction of the Court to supervise trusts.
- (b) In *New Zealand Maori Council v Foulkes*<sup>14</sup> Kós J stated that section 66 of the Trustee Act 1956 (as noted, comparable to section 133 of the Trusts Act 2019) can be used to resolve any live question of interpretation of a trust deed, but also “any uncertainty as to the exercise of a power”. It allows (without limitation) trustees to obtain directions when they are in doubt about how to exercise their discretion. Kós J also said that “the existence of a dispute, or at least a doubt, is essential” for section 66 to be engaged. A more expansive interpretation of the section was taken in *Re PV Trust Services Limited*<sup>15</sup> where it was held that one of the situations in which trustees could seek approval of the Court was where there was no doubt as to the existence of the powers in question, but “because the decision is particularly momentous” the trustees wish to obtain the blessing of the court for the proposed action.

---

<sup>13</sup> Including *Grand View Private Trust Co Ltd v Wong, Wen Young & Ors*, Court of Appeal of Bermuda, Civil Appeal No. 5A of 2019, 20 April 2020 (an appellate level decision from Bermuda), and *Mercanti v Mercanti* [2016] WASCA 206 (Supreme Court of Western Australia).

<sup>14</sup> [2014] NZHC 1777.

<sup>15</sup> [2018] 3 NZLR 160.



- (c) As noted above, the application to the Court would take place after the undertaking of a Consumer Consultative Procedure. A Consumer Consultative Procedure must be undertaken if:
  - (i) the power of variation in the Trust Deed is to be used in respect of key terms of the Trust Deed including the definition of "Consumer", clause 4 of the Trust Deed (relating to the purpose of the Trust), clauses 5 and 6 of the Trust Deed (containing the powers of disposition of income and capital from the Trust), clause 9.3 (relating to the sale or other disposition of the Trust's shares in TPW);
  - (ii) if the Trust proposes to sell or otherwise dispose of more than a base level of its shares in TPW; or
  - (iii) if the trust is to be wound up prior to its scheduled termination date.
- (d) As the proposed restructuring involves a disposition of TECT's shares in TPW to a new charitable trust and variations to most of the terms of the Trust Deed including various of the provisions noted in paragraph (c)(i) above, the Trustees must therefore ensure that a Consumer Consultative Procedure is carried out in accordance with the Trust Deed and that due consideration and regard is given to submissions received. However, Trustees retain responsibility for decisions taken following the consultation. For this reason the Trustees do not intend to undertake a vote as this could amount to an inappropriate delegation of power, and in any event may not represent the views of all Consumers.

#### 5.5 Alternative restructuring options which have been considered:

- (a) The Trustees have considered the availability of alternative restructuring proposals in light of TPW's strategic review. These alternatives are described in the Consumer Information Memorandum. They include the following:
  - (i) amending the definition of "Consumers" in the Trust Deed to provide that the beneficiary class includes retail consumers who are customers of the purchaser of TPW's retail consumer business within the District, going forward; or
  - (ii) winding up the Trust in its entirety upon the TPW sale and (after liquidating all Trust assets) distributing the resulting cash (pro rata or in some other pre-determined manner) to the persons who were Consumers immediately prior to the sale date.
- (b) Pursuit of either option would present substantial difficulties to the Trustees given their duty to act for proper purposes, interpreted in light of the proper construction of the Trust Deed and the scheme and



purpose of the Trust (its substratum, or core basis). By way of explanation:

- (i) The first option is inconsistent with the concept that TECT was established to represent a cornerstone shareholding in the successor electricity company to the Tauranga Electricity Power Board (i.e., the entity that is now TPW) and to provide the community with an indirect stake and the resulting benefits thereof in that locally established energy company. The TECT Trust Deed clearly contemplates that TECT would be a substantial shareholder in that energy company (the "Company" referred to in the Trust Deed). Several provisions in the TECT Trust Deed no longer make sense if that is not the case. Changing the Trust Deed to provide for TECT not being a shareholder in the energy company with which the TECT Consumers have their accounts, but with the Trust otherwise continuing in operation unchanged, would be a material divergence from the purpose and objectives for which TECT was established.
- (ii) The second option is also inconsistent with the purpose and objectives of direct and indirect community benefit for which TECT was established:
  - (A) It is clearly evident from the TECT Trust Deed that community benefit is a key purpose for which TECT was established. Numerous provisions of the Trust Deed contemplate the giving of indirect benefits to Consumers (which as noted above originally represented essentially the whole of the Tauranga and the Western Bay of Plenty community), and the application of Trust Funds to community purposes such as infrastructure improvement and other local projects.
  - (B) A liquidation and cash distribution is the back-up or default option in clause 6.2 of the Trust Deed should the Trustees fail to determine an alternative distribution plan on a winding up of TECT. This is a default mechanism on wind up. It is only intended to apply if the Trustees have not been able to determine a different application of funds. This fact supports the Trustee's view that a simple pro rata cash distribution is not intended to be the preferred option for the trustees of the day on a winding up. Rather, those trustees should apply their minds to ways of dealing with the Trust Fund which better reflect the purpose and objectives of the trust, such as community grants or other distributions for the benefit of the wider community.
- (c) Other alternatives considered by the Trustees face the same issue, i.e. that the changes that would be required to the Trust Deed to facilitate



them are substantially inconsistent with the objectives for which the Trust was established, applying either a “proper construction” of the trust deed approach or a “substratum” approach. For example, payment of rebates or provision of other benefits to persons who have voluntarily chosen not to be TPW customers is clearly not contemplated by the Trust Deed.

- (d) Accordingly, although the Trustees are required to consider these alternatives, the other alternatives listed in the Consumer Information Memorandum and any others proposed to them, these alternatives are not favoured by the Trustees.

**Chapman Tripp**

## TAB 23





**TECT**

TECT Proposal 2021

[About Us](#) [Funding](#) [Stories](#) [Rebates](#) [Contact](#)

info@tect.org.nz 07 578 5094



# Trustpower is changing, so TECT must change too



TECT consultation on structure changes; rebate protected



## TECT consultation on structure changes; rebate protected

Trustpower announced on 28 January 2021, that it is undertaking a strategic review of its retail business, that includes a potential sale.

We wrote to all beneficiaries and valued stakeholders of TECT, to let them know that Trustpower's decision means that TECT has to change.

Trustees have released a proposal that outlines the changes to TECT's structure needed to meet the purpose of the Trust Deed, and to ensure that the best interests of the Trust and its beneficiaries are protected. This proposal protects the rebate for existing TECT beneficiaries for approximately 30 years.

You can learn more about the proposal in the video below.



The detailed Notice of Proposal was emailed to all beneficiaries and you can find all additional information below.

All TECT beneficiaries were entitled to make a submission on the proposal. Beneficiaries who wished to comment on the proposal were invited to make a submission in writing by 4:00pm, Monday 22 March 2021. Submissions are now closed.



## Hearing of TECT Consumer Submissions

TECT heard submissions on proposed changes to the structure of TECT following a consultation period that was undertaken between 18 February and 22 March 2021.

Approximately 700 written submissions were received by the closing date of Monday 22 March 2021.

Submitters who requested an opportunity to speak to their submissions were invited to speak at a hearing of oral submissions held on Thursday 25th March 2021.

All TECT beneficiaries were invited to attend the hearing, but beneficiaries only had speaking rights if they requested to do so as part of their submission.

## TECT Proposal Document Library

<a href="#">Notice of Proposal</a> PDF	<a href="#">Consumer Information Memorandum</a> PDF	<a href="#">Beneficiary Feedback Form</a> PDF	<a href="#">Current TECT Trust Deed</a> PDF
<a href="#">TECT Charitable Trust Trust Deed</a> PDF	<a href="#">Proposed TECT Consumer Trust Deed - clean version</a> PDF	<a href="#">Proposed TECT Consumer Trust Deed - marked up version</a> PDF	<a href="#">Chapman Tripp summary of the changes to the TECT Consumer Trust</a> PDF
<a href="#">Proposed TECT Community Trust Deed</a> PDF	<a href="#">Chapman Tripp Consumer Memo</a> PDF	<a href="#">Trustpower letter</a> PDF	<a href="#">TECT Annual Reports</a>
<a href="#">Annual Distribution Plan 2020/21</a> PDF			

## Consumer Information Sessions

Trustees held a series of information sessions to outline the proposal and answer any questions on Wednesday 3, Thursday 4, and Sunday 7 March. View the presentations below.



## Media Releases

### TECT Media Releases

TECT to proceed with changes to Trust structure, following consultation (Thursday 22nd April, 2021) - [VIEW HERE](#)

Consultation on TECT Proposal closes today (Monday 22nd March, 2021) - [VIEW HERE](#)

One week left to have your say about proposed changes to TECT (Monday 15th March, 2021) - [VIEW HERE](#)

TECT consultation reaches half-way point (Monday 8th March, 2021) - [VIEW HERE](#)

TECT to consult on structure changes; rebate protected (Thursday 18th February, 2021) - [VIEW HERE](#)

TECT assessing impact of Trustpower strategic review (Thursday, 28th January, 2021) - [VIEW HERE](#)

### Trustpower Media Releases

Update on Trustpower strategic review (Wednesday 28th April, 2021) - [VIEW HERE](#)

Trustpower strategic review of retail business (Thursday 28th January 2021) - [VIEW HERE](#)

## FAQs

[Click on a question below to view the answer.](#)

1. Why is TECT proposing this change?
2. What changes are being proposed?
3. Why is this any different to the change proposed in 2018 that failed?
4. Why do I lose my rebate if I change electricity supplier?
5. What happens if Trustpower does not sell its Retail Business?
6. Does TECT agree with the decision by Trustpower to carry out a strategic review and consider a potential sale of its Retail Business?
7. The Trustees didn't stand on a change mandate so why make them now?
8. Why not wind up the Trust and transfer the existing assets back to beneficiaries?
9. Why did TECT undertake a consultation before agreeing the final proposal?
10. Why don't beneficiaries get to vote on the proposed changes to TECT?

11. Why does the proposal need to go to the High Court?
12. If the proposal proceeds, what input would Consumers have around the types of community initiatives that get funded each year?
13. What groups or initiatives will be funded through the community grants?
14. How much money will be available to community organisations?
15. Why must Consumers stay with the company that buys Trustpower's business, to get rebates?
16. I don't want to wait 30 years to get my full pay out, why can't I just get my share of TECT paid out to me now?

## Future Rebate FAQs

We are currently in the process of considering the future of TECT rebates, which you can read more about above.

### 1. Who would be eligible to receive the TECT rebate?

To be eligible to receive a TECT rebate, beneficiaries must meet the following criteria:

#### a. Initial Eligibility

- Were a Trustpower power customer in TECT's District on 28th January 2021 (the Record Date)
- The number of eligible connections (ICPs) per customer will be recorded on this Record Date.

#### b. Ongoing Eligibility

- Subsequent to the sale of Trustpower's retail business, the customer:
  - Remains a power customer of the buyer of Trustpower's Retail business, with an account in the TECT District
  - Remains a power customer of Trustpower's Generation business (Commercial & Industrial customer) with an account in the TECT District
  - Returns to the buyer of Trustpower's Retail business as a power customer after a break of no more than three consecutive eligibility periods
  - Is no longer deemed a beneficiary if they are ineligible for three rebates in a row
  - Can have up to five additional ICPs (in the TECT District) over and above the number of ICPs at record date
- To receive TECT distributions, beneficiaries must meet the following criteria:
  - Have an active power account with the buyer of Trustpower's Retail business in the same name on:
    - 01 October and continuously through to 31 March for the July rebate
    - 1 April and continuously through to 30 September for the December rebate
  - If a beneficiary provides a final reading for their account on 31 March or 30 September, they are owing the line charges for that day, so are therefore a customer on that day, and are entitled to a rebate.

Note: 1. Parts of Waikā Beach are excluded from the TECT district. 104 Seaford Rd - Waikā Beach is excluded. 106 Seaford Rd - Rowentown is included in TECT's district.

### 2. How much would the rebate be?

The annual rebate would be \$500 per ICP for each Eligible Consumer, irrespective of size or type of consumer. The number of ICPs will be capped at the number recorded against the Eligible Consumer on the Record Date (28th January 2021) plus up to an additional five ICPs within the TECT District which also meet the eligibility criteria.

The rebate amount will increase to \$600 in 2030 and \$700 in 2040, to reflect inflation.

**3. When would the rebate be paid?**

The rebate would be paid in two instalments, in July and December, i.e. \$250 every six months.

*same as current policy*

**4. How would the rebate be paid?**

The rebate could be paid directly into eligible beneficiaries' nominated bank accounts. If preferred, beneficiaries could have their rebate credited to their power account. This would be the default payment method if no bank details are provided.

*same as current policy*

**5. Would people outside Inverclyde/Western Bay receive a rebate?**

No, only customers of Trustpower or the buyer of Trustpower's Retail business living in the **Eligible Areas** would be eligible to receive the rebate.

*same as current policy*

**6. Would current customers of the buyer of Trustpower's Retail business be eligible for the rebate?**

No.

**7. Would new customers of Trustpower or the buyer of Trustpower's Retail business be eligible for the rebate?**

Future customers of Trustpower or such a buyer are not Eligible Consumers, and would not receive the rebate.

**8. What would happen if I move house during the qualifying periods (1 October – 31 March and 1 April – 30 September)? Would I still receive a TECT rebate?**

If you missed a rebate eligibility year you'd come back in and be included in the next one. However, if you missed 3 consecutive rebates (essentially an 18-month grace period), you would become ineligible for future rebates.

*current policy allows for a 30-day grace period only*



9. If we changed our account name during one of the qualifying periods (1 October - 31 March for the July rebate, and 1 April - 30 September for the December rebate) - would we still get a rebate?

If you changed the name on your power account during one of the qualifying periods you would not be eligible for that qualifying period's rebate. Some exceptions would apply.

\*same as current policy

10. The account is in our landlady's/Douly corporate name but we pay the bill. Would we receive the rebate?

The rebate would be paid to the person or organisation named on the Trustpower or buyer of the Trustpower Retail business account. This person(s) would be liable to pay the bill and would therefore be entitled to receive the rebate.

\*same as current policy

#### Write to us

The Kollektive  
DX Box 1940007  
Teuranga 3112

#### Visit us

The Kollektive  
105 37th Avenue,  
Teuranga, New Zealand

#### Phone us

07 578 5094

#### Email us

[info@tekt.org.nz](mailto:info@tekt.org.nz)



# TECT



TECT Proposal 2021 [About Us](#) [Funding](#) [Stories](#) [Rebate](#) [Contact](#)

## TAB 24



# **TECT** **Consumer Information Session**

---

March 2021



**TECT**

# A Look Back

## TAURANGA ELECTRIC POWER BOARD IMPORTANT MATTERS RE- CEIVE ATTENTION.

A meeting of the Tauranga Electric Power Board was held in the Borough Council Chambers on Saturday last. Present, Messrs T. Lochhead (Chairman), J. Hume, J. M. Darragh, W. A. Bennett, W. J. Griffin and H. J. Gill.



# History of TECT

---

- 84 million shares were issued in the newly formed Trustpower
- Local community decided to take 50% for themselves.
- Remainder put in a trust (TECT) for the benefit of current and future generations.
- 100% of electricity consumers in the TECT district (Tauranga/Western BOP region) were TECT beneficiaries.
- Today it is around 59% and decreasing.

# History of TECT



E. The benefits which the Trustees derive through their ownership of the assets of the Trust Fund will be made available directly or indirectly as the Trustees in their discretion decide to Consumers.

(d) By carrying out or causing to be carried out or funding in whole or in part (whether by way of Consumer distribution, loan, investment, the underwriting of project liabilities, the giving of financial support or otherwise) the carrying out of projects or other community initiatives which in the opinion of the Trustees will benefit Consumers.

Amended 10/12/2002

- (e) By carrying out or causing to be carried out works which in the opinion of the Trustees will benefit Consumers such as:
- (i) Improvements to the safety of Consumers by removing road and overhead hazards caused by above ground electricity supply support systems in the District;
  - (ii) Avoiding, remedying or mitigating any adverse effects of energy related activities on the Environment;
  - (iii) Promoting research into more efficient ways of producing and distributing electrical energy for the benefit of Consumers in the District including the awarding of research scholarships or prizes and the funding of research and development projects;
  - (iv) Subsidising the installation of the means of supply of energy to Consumers which would otherwise be uneconomic.

# History of TECT

---

**‘Termination Date’ means the earlier of 1 January 2072 and the date upon which the Trustees resolve that the Trust be wound up in accordance with clause 14 provided however that if the perpetuity period restrictions cease to apply to this Trust or are amended to permit the Trust to continue beyond 1 January 2073, this definition shall be amended so that the Termination Date shall be the date beyond which the Trust may not continue;**



# History of TECT

---



**Tauranga Energy Consumer Trust**

*Established  
21 December 1993*

Common Trustees

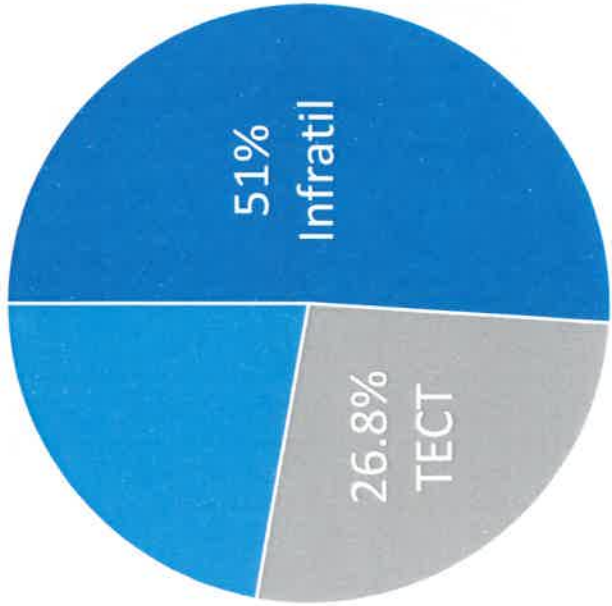
**TECT Charitable Trust**

*Established  
27 March 2002*

# TECT's relationship with Trustpower

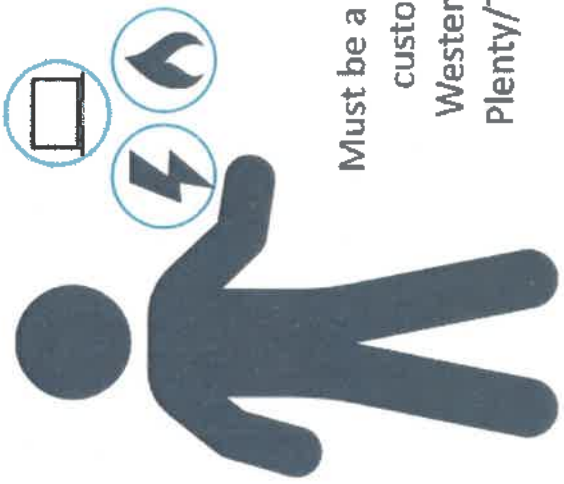
1

Shareholder



2

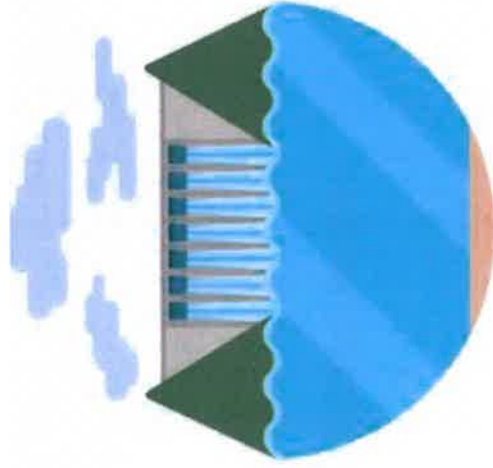
Trust beneficiaries



Must be a Trustpower customer in Western Bay of Plenty/Tauranga

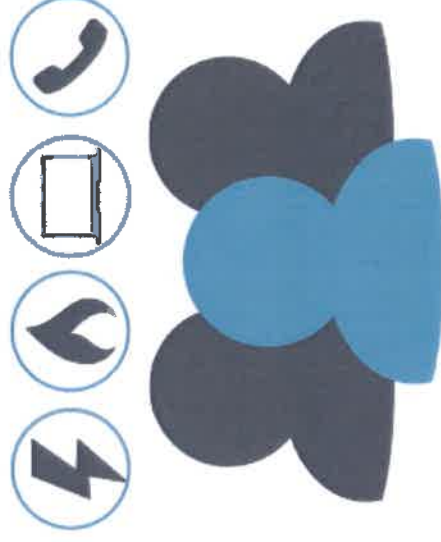


## Generation



≈ 80% of EBITA

## Retail



≈ 20% of EBITA

# Trustpower announcement



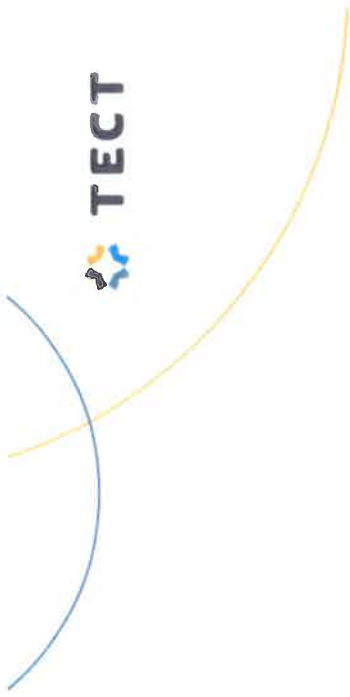
Business

## Trustpower looks to sell retail arm

This could have large implications for shareholders.

By **Cailein Stuart-Memnoch**  
Thu, 28 Jan 2023





Generation

An illustration of a hydroelectric dam with water flowing through its spillways into a reservoir. The scene includes green hills and blue clouds in the background.

New Company  
Retail

A set of four circular icons representing retail services: a lightning bolt, a flame, a smartphone, and a telephone handset. To the right of these icons is a stylized icon of three people in blue and dark blue.

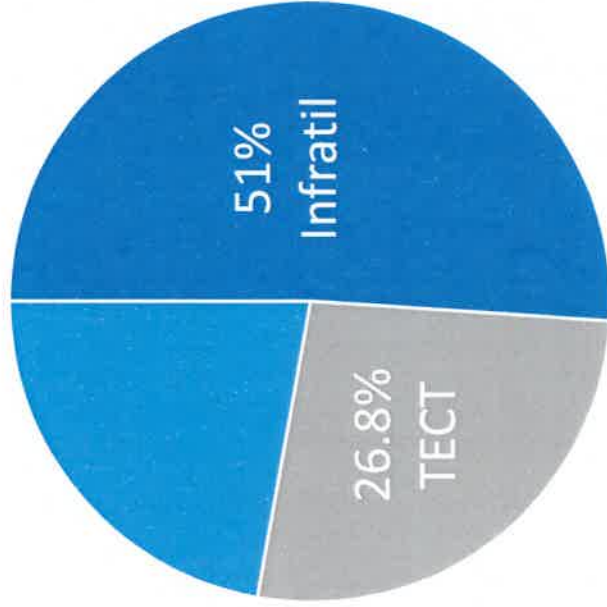
# The Effect on TECT



1

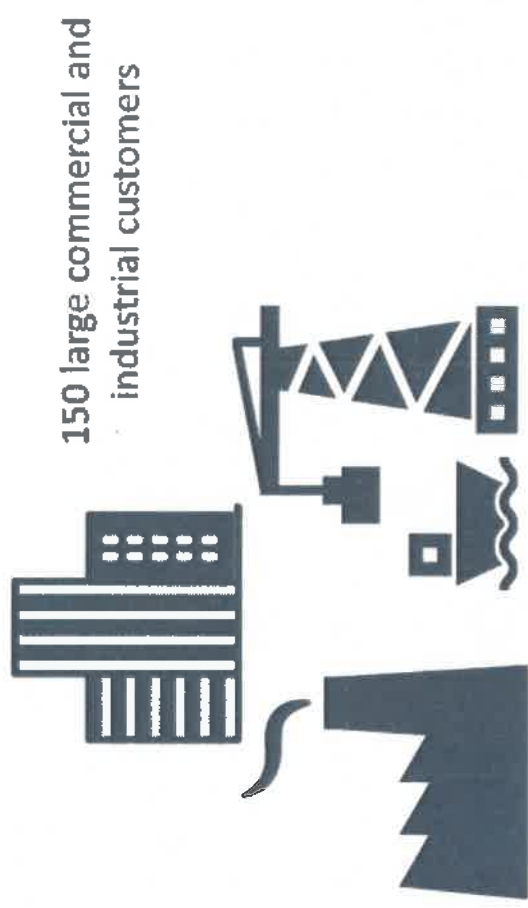
Shareholder

Trustpower Generation



2

Trust beneficiaries



**Trustpower is changing,  
so TECT must change  
too.**



# Trustee considerations



Trustees must act as a result of Trustpower's potential sale of its retail business:

- **to do nothing would be inconsistent with their duties** – Trustees must actively consider impact of potential sale on TECT, and options available
- on a sale, unless TECT restructures:
  - TECT's purpose would be frustrated
  - rebates could no longer be paid to retail consumers - trust deed doesn't contemplate purchase of retail business by third party

Trustees have therefore prepared a restructuring proposal for public consultation and (subject to that consultation) High Court review



# Trustee considerations



**Consultation process does not involve a vote** - Trustees cannot delegate their decision-making responsibility (consumers can voice their opinion in consultation process)

Some options aren't available:

- stopping the sale - TECT is only a 26.8% Trustpower shareholder
- winding up TECT and distributing capital to consumers – inconsistent with purpose for which TECT established.
  - TECT set up as a long term Trust and all decisions need to balance the rights of current beneficiaries and future generations, to ensure fairness to all.

# Key Principles

---

In considering options for a new structure for TECT and the transition to it, Trustees have been guided by four key principles:

- **TECT's purpose** – the purpose and intent that TECT was created for.
- **Maintaining TECT's capital** – so that the Trust can continue for future generations.
- **Legal obligations and Trustee duties** – doing nothing is not an option.
- **Fairness** – current beneficiaries and future generations all benefit.



## **Is the rebate protected?**

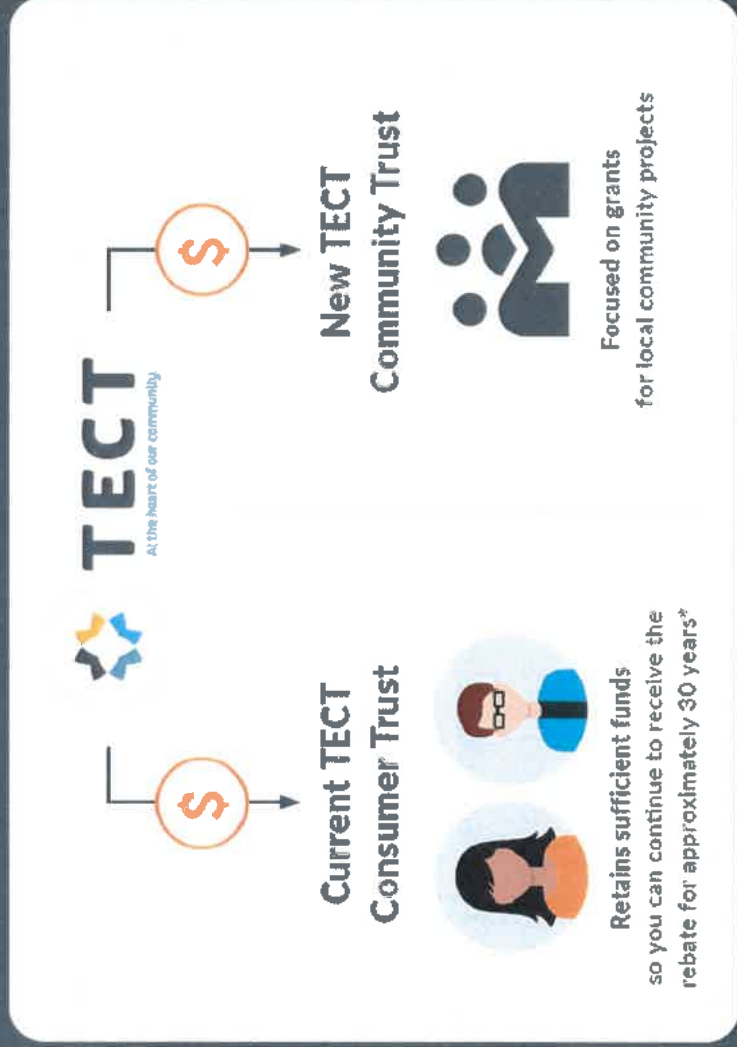
---

Yes, the TECT rebate is protected under the proposed new structure. Existing beneficiaries will continue to receive it for approximately 30 years.



# Proposed changes to TECT

How TECT **needs to change** to protect your rebate and continue to benefit the local community.



\*If the conditions set out in the CIM are met



## **Proposed changes to TECT - Rebate**

---

The rebate will be \$500 for the first ten years, increase to \$600 in 2030 and increase further to \$700 in 2040 (to account for inflation).

Rebates will be paid on the usual six-monthly TECT cycle.

To receive the rebate, current beneficiaries must remain a customer of Trustpower or the buyer of the Retail Business, in the district. If you leave, the rebate stops.

New customers and the current customers of the new business **do not** become beneficiaries.

As at 31 December 2050, TECT must be wound up and its remaining assets to go to the new TECT Community Trust.

## **Who will not get a rebate?**

---

The following groups will not receive a rebate:

- The existing customers of the buyer of Trustpower's retail business, whether in Tauranga and Western Bay of Plenty or elsewhere.
- New customers of the buyer of Trustpower's retail business, whether in Tauranga and Western Bay of Plenty or elsewhere.

## **TECT Assets**

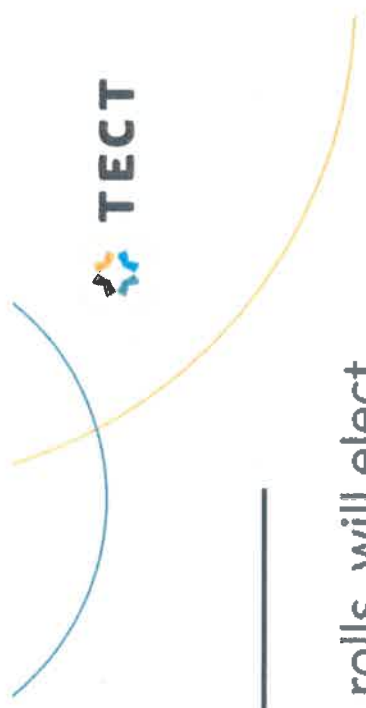
---

TECT has developed a solution that will transfer TECT's current assets to the TECT Community Trust.

The funds required in the TECT Consumer Trust to pay the rebate will be accounted as a loan from the TECT Consumer Trust to the TECT Community Trust.

The amount and structure has been developed using customer information from Trustpower and financial modelling from KPMG and Findex.





## **TECT Governance**

---

The voters from the Tauranga / Western BOP electoral rolls, will elect six trustees to the new TECT Community Trust.

Option to appoint an additional two trustees, to contribute specialist skills and diversity.

Trustees will automatically be appointed to the TECT Consumer Trust.

The current TECT trustees will become the inaugural trustees, and will then be elected on the same four year term cycles as they are currently.

The terms of appointment of trustees are staggered so that three trustees retire every two years. The next election will be held in 2022.



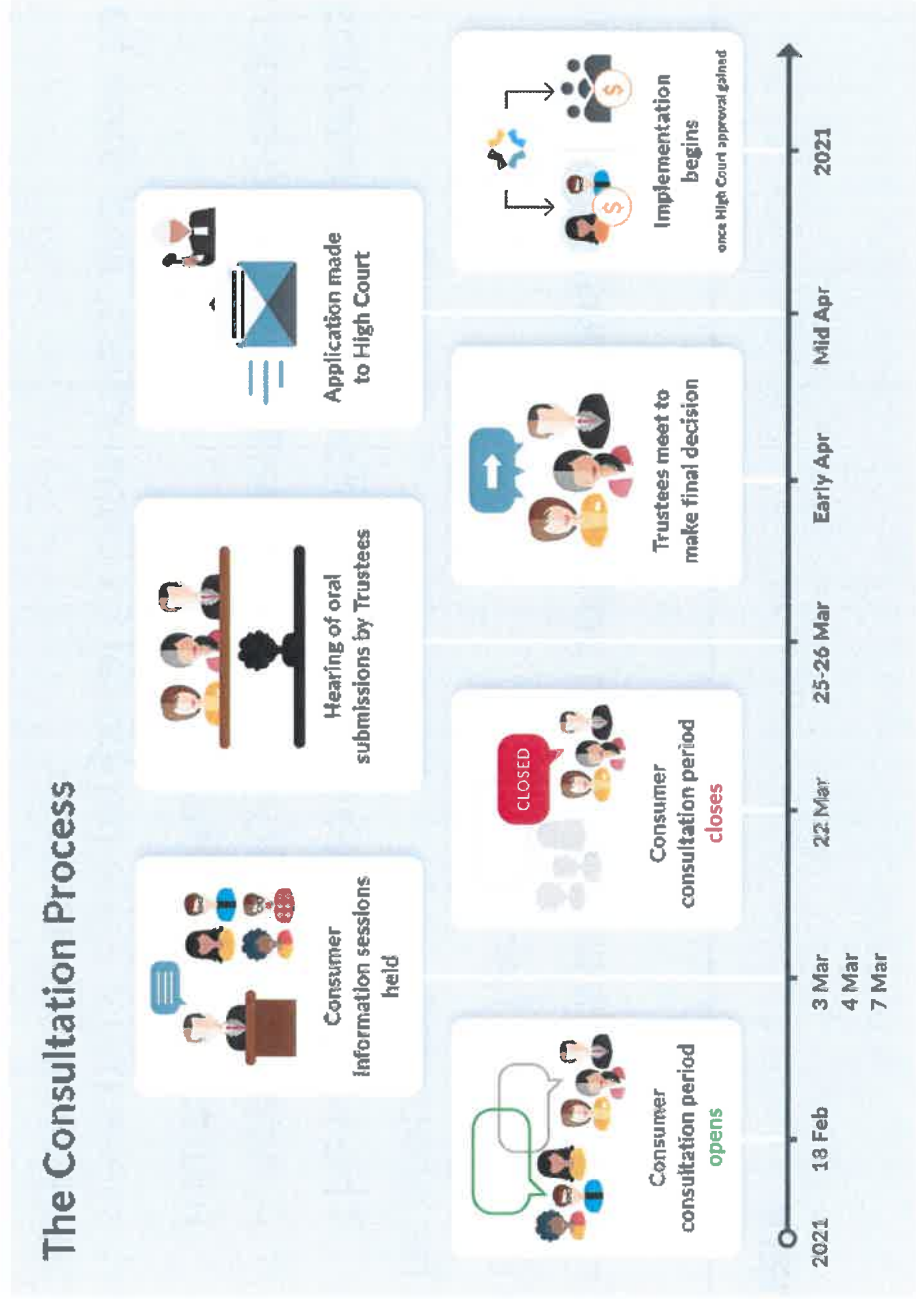
## **Other options that have been ruled out**

---

In considering options for the future of TECT, Trustees have also carefully considered and ruled out the following, based on clear legal advice:

1. Stop Trustpower selling the retail business
2. Continue with the status quo
3. TECT remains unchanged and simply makes the customers of the new company the beneficiaries of TECT
4. Wind up TECT and pay out beneficiaries.

## Next steps | The consultation process





## Summary

---

1. Trustpower is proposing to sell its retail business
2. TECT must change
3. The proposal
  - a. The rebate has been protected for current beneficiaries
  - b. A new community trust will be established to benefit future generations
4. Trustees must take proposal to consumers, and then to High Court

# Q&A

**Thank you**



**TECT**

# TAB 25





# TECT

## BOARD REPORT

---

**TO:** TECT TRUSTEES  
**FROM:** Wayne Werder  
**DATE:** For meeting 15 April 2021  
**FILE REF:** 21/03/5 PP  
**SUBJECT:** Consumer Feedback on the TECT Restructure Proposal  
**STATUS:** ~~For Recommendation~~ ~~For Discussion~~ For Decision

---

### Executive Summary

- On 28 January 2021 Trustpower announced a strategic review of its retail business. A potential outcome of the review is a sale by Trustpower of its retail business.
- As a consequence of the effect this would have on TECT, the TECT Trustees put a proposal to consumers for their feedback on 18 February 2021.
- The proposal has generated considerable debate in the community with close to 800 submissions received from consumers and 32 people providing a verbal submission to Trustees on 25 March 2021. In addition to this, there were several newspaper articles and social media discussions regarding the proposal.
- Feedback on the proposal was received via the TECT submission form sent to all consumers and via TECT's website.
- The major theme of the feedback is support for the proposed changes to TECT.
- Submissions in support identified that the proposal was well balanced in protecting the rebate whilst also looking after future generations through the proposed community Trust.
- Feedback from those against was varied, with some preferring that the Trust be wound up and the funds distributed to current consumers, whilst others provided a range of views alternate options.
- TECT Trustees were clear in their communications to consumers that this was a genuine consultation. Trustees asked for feedback on this basis. Now that the consumers have expressed their views, a decision is required from the Trustees on whether to proceed, and if so, what form the final proposal will take.
- This report is intended to assist Trustees to review, understand and consider the submissions. It is not intended as a substitute for each Trustee to read in full all of the submissions.

### Suggested Resolution

#### *That it be resolved That Trustees*

- Receive the written submissions to the consultation on the on the proposed restructure of TECT from those who did not wish to be heard (Attachment A).*
- Receive the verbal and written submissions to the consultation (including additional written material handed out by submitters) on the proposed restructure of TECT from Consumers that chose to be heard (Attachment B).*
- Accept and receive the 11 late submissions received after 22 March 2021 (Attachment C).*



# 1. BACKGROUND

## Trustpower strategic review

1. On 28 January 2021 Trustpower announced a strategic review of its retail business. The stated purpose was to test market interest in its retail business and explore the merits and business case to establish a standalone generation business.
2. A potential outcome of the strategic review is a sale by Trustpower of its retail business.
3. If a sale of Trustpower's retail business proceeds, some change to the Trust Deed will be required because:
  - a. the current retail and consumer customers of Trustpower's retail business will cease to be Consumers under the TECT Trust Deed; and
  - b. the only Consumers of Trustpower for the purposes of the Trust Deed will be the small number of larger commercial and industrial electricity customers retained by Trustpower in the Tauranga and Western Bay of Plenty district.
4. Following Trustpower's announcement, the Trustees were therefore required to consider updating the structure of TECT in order to meet their obligations under the TECT Trust Deed.

## Proposal to restructure TECT

5. The Trustees agreed on a preferred restructure proposal to put to Consumers under the Consumer Consultative Procedure (the **Proposed TECT Restructure**).
6. In the Proposed TECT Restructure:
  - a. the TECT Trust Deed would be amended, in accordance with which TECT would continue to pay the rebate to Consumers for the next 30 years;
  - b. a new charitable trust would be established which, over the long term, would be the primary vehicle to hold TECT's assets and benefit Consumers through the use of funds in ways other than rebates; and
  - c. the 2002 Charitable Trust would be wound up.
7. In light of the length of time until termination of the TECT Trust Deed, the Proposed TECT Restructure would be implemented whether or not a sale by Trustpower results from its strategic review.
8. The particulars of the Proposed TECT Restructure are:
  - a. the TECT Trust Deed would be amended, and would continue in existence for the purpose of paying electricity rebates to a fixed class of beneficiaries, being:
    - i. the retail consumers of Trustpower on 28 January 2021 (being the date that Trustpower announced the strategic review, the **Record Date**) for so long as each of them continues as a customer of the purchaser of Trustpower's retail business (or any future purchaser) and remains in the District (Tauranga and Western Bay of Plenty); and
    - ii. commercial and industrial consumers of Trustpower on the Record Date for so long as each of them continues as a customer of the purchaser of Trustpower's retail business (or any future purchaser) and remains in the District.
  - b. the rebate would be \$500 a year for the first ten years, would increase to \$600 in 2030 and increase further to \$700 in 2040, to take account of inflation;

- c. a new charitable trust would be established for charitable purposes which benefit the community in the district (the **TECT Community Trust**);
  - d. all of TECT's assets, including TECT's indirectly held shareholding in Trustpower, would be transferred to the TECT Community Trust to serve the needs of people living in the district into the future. The TECT Community Trust would loan the TECT Consumer Trust funds which are sufficient to pay a yearly rebate to the beneficiaries until the end of 2050; and
  - e. the 2002 Charitable Trust would be wound up.
9. The Trustees will obtain advice from KPMG on the exact structure to be adopted in order to transfer and hold the various assets in an appropriate and efficient way.
10. The Trustees considered alternative restructuring options and unanimously agreed that the Proposed TECT Restructure was the most appropriate option to put to Consumers under a Consumer Consultative Procedure.

#### **Consumer Consultative Procedure**

11. In accordance with clause 13.2 of the Trust Deed, the Proposed TECT Restructure requires the Trustees to follow the Consumer Consultative Procedure set out in the Trust Deed.
12. Schedule 3 of the Trust Deed prescribes the steps the Trustees must take to implement a consultative procedure with Consumers.
13. Clause 11 of the Trust Deed specifies how information is to be provided to Consumers:
- 11.1 *Subject to clause 10.4, for the purpose of complying with any requirement under this Deed to make any document or information available to Consumers, it shall be sufficient for the Trustees to make such document or information available for inspection at any office of the Trust or any office of the Company or at any other place in the District during normal business hours on any business day.*
  - 11.2 *The Trustees shall give not less than three days' notice in a principal newspaper or newspapers circulating in the District of the place at which and the times when such documents or information may be inspected by Consumers.*
14. The Trustees took the following steps to ensure compliance with the Consumer Consultative Procedure:
- a. on 29 January 2021 the Trustees placed a notice of the Proposed TECT Restructure before a meeting of the Trustees;
  - b. on 18 February 2021 the Trustees gave notice of the Proposed TECT Restructure to Consumers by publishing a notice entitled "Notice of Proposal" (the **Notice**) and a consumer information memorandum on the Proposed TECT Restructure titled "The Future of TECT" (the **CIM**);
  - c. In The Notice of Proposal, *The Trustees proposed the following:*  
*"That TECT restructures in the manner set out in the Notice of Proposal dated 18 February 2021 and as referred to in the Consumer Information Memorandum dated 18 February 2021, including by amending the TECT Trust Deed, establishing the TECT Community Trust, causing TECT's indirectly held shares in Trustpower to be transferred into that new trust, and making the distributions and rebate payments referred to in those documents."*
  - d. the Trustees:
    - (a) made copies of the Notice and the CIM available for inspection at the office of the TECT;
    - (a) published a copy of the Notice and the CIM on the TECT's website; and

- (b) mailed a copy of the Notice to every Consumer;
  - (c) advertised details of how Consumers could inspect the Notice and CIM in the Bay of Plenty Times and the Weekend Sun;
  - (d) advertised details of the consultation on TECT's various social media platforms
  - (e) provided copies of the various consultation documentation on the TECT website.
- e. The Trustees held three Consumer Information Sessions on 3, 4 and 7 March 2021.
  - f. the Notice and TECT's website specified that Consumers could make submissions on the Proposed TECT Restructure to the Trustees until 4pm on 22 March 2021;
  - g. the Notice stated that hearings of Consumers' verbal submissions would be held on 25 and 26 March 2021. Only one day was required and hearings took place on 25 March 2021 and all Trustees were present;
  - h. every meeting at which Consumers' submissions were heard was open to Consumers and to the general public;
  - i. the Trustees made all written submissions on the Proposed TECT Restructure available to Consumers at the TECT's office, and on the TECT website.

## 2. OVERVIEW OF SUBMISSION NUMBERS

A total of 780 written submissions were received at 22 March 2021. See Figure 1.

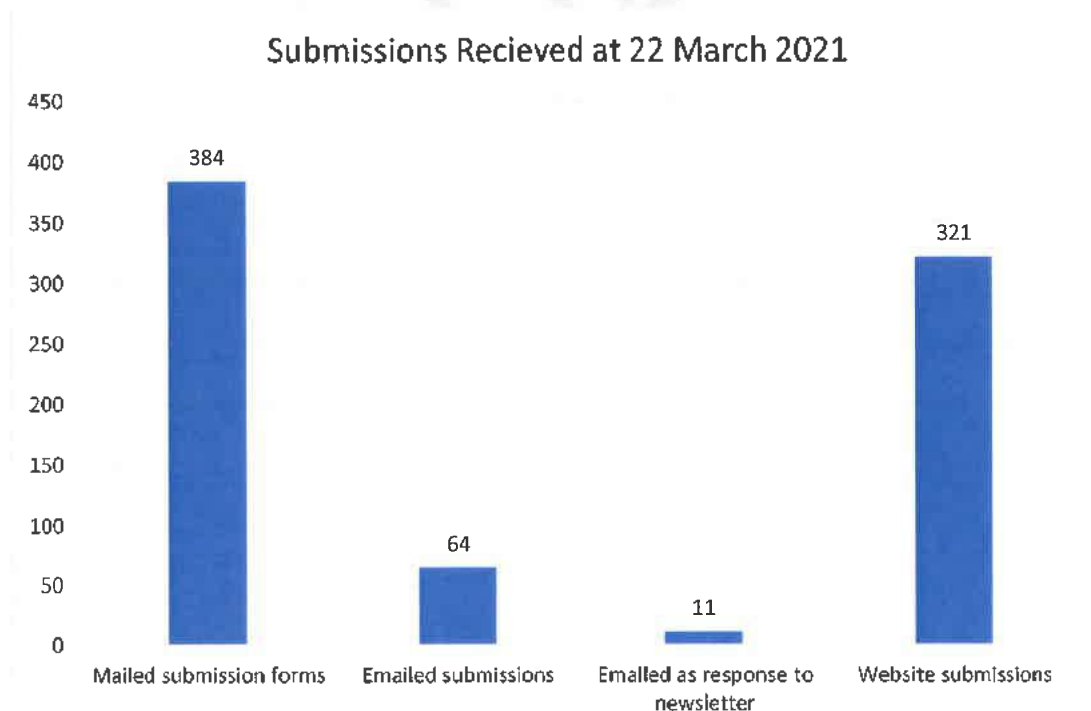


Figure 1: Total Submissions at 22 March 2021

**Late Submissions** – a total of 11 late submissions were received. These were largely received through the post in the day after submissions closed.

**Verbal Submissions** – 41 consumers indicated they would like to make an oral submission to the Trustees. Oral Submissions were held on Thursday 25 March at Club Mt Maunganui. The hearing of those submissions was open to the public. Each submitter was given 10 minutes to present their submission, although that time limit was not strictly enforced. Of those 41 scheduled a 10 minute timeframe, 32 presented to the Trustees. Some of these submitters provided an additional written submission on the day – these have been included and added to the relevant consumer's original submission.

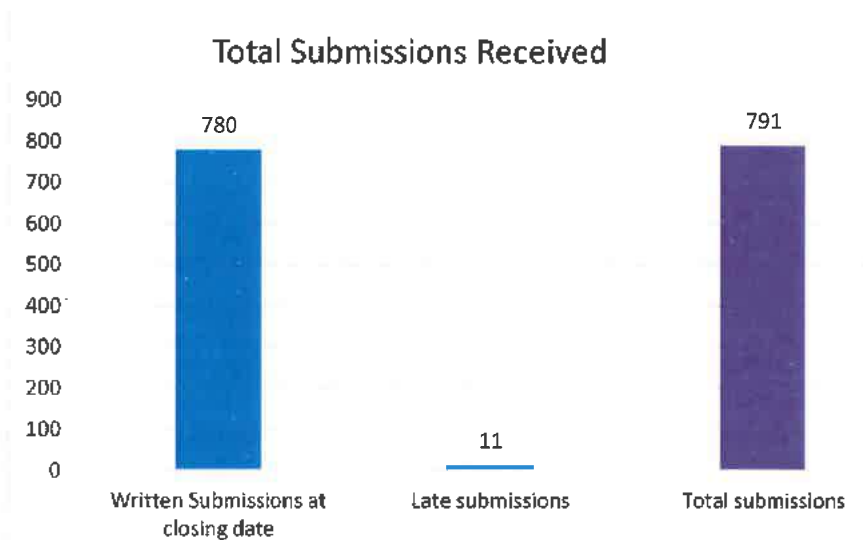


Figure 2: Total Submissions

### 3. GENERAL SUMMARY OF CONSUMER FEEDBACK

#### ***Overall, were consumers supportive of the proposal?***

The majority of consumers support the proposed changes to TECT:

- Of the 791 submissions received approximately 45% were supportive with limited or no conditions attached to their support.
- A number of other submitters (approximately 10%) supported the proposal but added certain conditions that they felt would improve the proposal.
- A further group of submitters (approximately 12%) said that they would like to see Trustees keep the rebate. Given the proposal is to keep the rebate for 30 years these could also be considered as submissions supporting the proposal.
- In total, those three groups represented approximately 67% of submitters.

A number of consumers opposed the proposed changes to TECT:

- Of the 791 submissions received approximately 5% were opposed to the proposal with limited rationale for their opposition.

- A number of other submitters (approximately 12%) were against the proposal and suggested that the Trust should be wound up and the funds distributed to consumers.
- A number of submitters (approximately 2%) felt the Trustees were not within their powers or acting against the best interest of consumers.
- A number of submitters (approximately 6%) preferred a lump sum payment over the proposed rebate.
- A number of submitters (approximately 3%) preferred that TECT remained unchanged.
- In total, those opposing represented approximately 28% of submitters.

Lastly, a group of submitters approximately 5% made submissions on matters that were neither in support of, nor against the proposal.

Consumers were able to provide comments on the submission form to expand on the reasons why they were either in support of, or against, the proposal. Below is a summary of the key points made. This provides an overview only and is not an exhaustive list of all comments made, rather it picks up the ones mentioned the most. TECT Trustees have been provided with a full copy of the submissions and this information is also being made available to the public, along with a submission summary.

### ***What are the main reasons for consumers SUPPORTING the proposal?***

The main reason why consumers support the proposed changes to TECT is that they consider the balance to be fair between receiving a rebate and the community grant programme continuing through the new community trust.

Other key points include that the proposal:

- Continues the rebate programme
- The grants programme continues for future generations
- Benefits both present and future generations.
- Ensures funding remains in our area.
- It balances out needs of the beneficiaries and the wider community.

Feedback included that the proposal was fair and well thought out. Consumers also commented that they support the Trustees future proofing against inevitable changes that will affect the current approach.

### ***Were there any qualifications to this support?***

A number of consumers expressed support but with qualifications, or suggestions how to improve the proposal.

A number of consumers expressed concern about the current pricing of Trustpower and hoped that the proposal would mean that Trustpower or the new buyer would have more competitive pricing. Many felt that Trustpower or the new buyer should compete on an equal footing for customers based on service and price and that the cheque shouldn't be used as subsidy for the provision of power. Some consumers questioned the fairness of whether the payment locked consumers into a contract with Trustpower or the new buyer for ongoing services.

Some consumers questioned the 30 years of rebate that was proposed. The feedback varied with some saying the period should be shorter and more placed in the community trust, while others said the period should be shortened and more given to individual consumers.

### ***What are the main reasons for consumers NOT SUPPORTING the proposal?***

The main reasons why consumers do not support the proposed changes to TECT are:

- Some consumers argued that the Trustees should do nothing, and that the status quo should remain.
- A number of consumers argued it was 'their' money and therefore they should be paid out in full (i.e. wind up the Trust).
- A number of consumers mentioned electricity pricing, and these consumers were generally not happy with the arrangement between TECT and Trustpower and felt that they were being over priced as result by Trustpower
- A number were felt it was unfair to be locked in the new power provider given they did not know who this was, and it would not have the same connection to the region as Trustpower currently does.
- Some consumers objected to Trustpower selling the retail and questioned whether TECT should do more to stop this. Some submissions expressed satisfaction with the current approach and are of the view that "if it aint broke, don't fix it".
- Some consumers felt that a lump sum payment was preferred over continuing the rebate programme. A variety of views were received on preferences for this lump sum payment (from a full payment to partial payment).

There were a number of consumers who generally objected to the proposal but gave no reasons to their objection. Some consumers feeling that the Trustees have a hidden agenda or were not working in the best interests of the Trusts beneficiaries.

### ***Were there any qualifications to not supporting the proposal?***

- There were a number of comments made, both from those supporting and not supporting the proposal, regarding the proposed rebates and the eligibility for these:
  - Some felt that 30 years was too long, and that more funds should go the community trust
  - Some felt 30 years was too long as it disadvantaged the older generation
  - Some felt that they should be able to 'cash in' their rebates now (i.e. a lump sum payment).
- Some consumers raised the issue of the current income distribution policy (80/20), and that this should be taken into account when determining any capital split between the consumer trust and the community trust.
- A small number of consumers spoke of the legality of the proposal, with some questioning whether the Trustees had the power to make such a decision.

### ***What other comments did consumers make on the proposal?***

Other feedback included:

- Loyalty to Trustpower and TECT was submitted as a strong reason why consumers stay with Trustpower (and TECT).
- The funds belong to the consumer and the proposal is not in their best interests.
- The proposal is unlawful, goes against the original purpose of the Trust and Trustees have no mandate to undertake this proposal.
- The consultation process is rushed and poorly executed.
- Slow down and wait until the Trustpower retail sale has actually happened.
- Undertake a new process over time, consider different allocation models and fully engage with consumers about this.

### ***What needs to be taken into consideration should the proposal proceed?***

Additional comments included:

- Concern about the restrictions that might be placed on the new community trust – i.e. as a charity it might not be able to fund the activity that TECT currently funds.
- Concern about accountability and scrutiny over how funds are allocated to community and charitable organisations.
- An expectation that the new buyer will not be able to benefit unfairly from the rebate by increasing pricing.
- Ensuring that best practice is followed with regard to the Governance of the Trusts, and that Trustees should be required to be NZ citizens.
- Consumers provided comments on the new TECT Community Trust and how it should operate:
  - increase community consultation and involvement on how funds are distributed.
  - ensure application process is balanced and equitable.
  - provide budgeting support for those that have relied on TECT rebates
  - ensure money is spent on those that are most in need.
  - Support for increasing the boundaries to include the entire Western BOP region (including Waihi Beach)
- Some Consumers asked about the future investment policy for the trust and whether there was an intention to diversify the investment portfolio.

## 4. SUBMISSION COMMENT INSIGHTS

This section summarises the key themes identified above. It includes selections of representative submissions (including from the oral and further written submissions received on 25 March 2021). In each case, the sample comments are not exhaustive, but rather pick up some of the rationales used by consumers in their comments. They are not intended to substitute for a careful reading of the whole of the submissions.

### a. GENERAL SUPPORT

The majority theme was support for the proposal. Those that were in support were either in full support or offered some qualifications to their support. These numbered approximately 55% of submissions.

#### Full support

<i>TECT proposed changes and amendments are well researched, formulated and seems absolutely logical in terms of its Trustees obligations to act in the best interest and for the benefit of current and future generations of Tauranga &amp; WBoP communities.</i>
<i>I like many became a customer of Trustpower long after the origins TECT. It is more than fair for me to continue to receive funds long after Trustpower may sell their retail operations. For TECT to be able to do this and make significant increases in community support will make our region the envy of NZ with the ability to provide charities with resources that will make all facets of our community so much stronger. I fully support the TECT proposal for a better future for the Western bay of Plenty. Everyone is a winner with this proposal.</i>
<i>Hi TECT, we support the proposal of the TECT Trustees to make changes to its trust. We like that the trust is protecting its investments to enable ongoing support of community organisations and projects to develop the region. Protecting the cheque is also a benefit but we would be happy for our annual cheque to go towards worthy organisations and projects. Well done on all the work to date. All the very best</i>
<i>I totally support proposal and have all confidence that the decision is being made with the best interests of the Trust and its beneficiaries are protected. Although the rebate is important to many it's the work and investment into community that TECT enables that make this a no brainer decision .</i>
<i>I agree with the proposal. Change is necessary given TrustPower's review of its retail business. The proposal is very fair to consumers - it gives them a lot of security as to future rebates. The changes are desirable whether or not Trust Power changes it business now as it will protect against future changes</i>
<i>You have my full support to update the structure of TECT in order to meet the obligations under the TECT Trust Deed; to ensure the rebate will continue for approx 30 years, to every existing retail customer eligible.</i>
<i>Go for it guys sale or not!!</i>

#### Conditional support

<i>I generally support the TECT proposal but think that the timeframe for making the TECT beneficiary payments is rather too long. Ten years would in my opinion be more than adequate. Judging by the community reaction to date you are certainly on the right track. Thank you for the clear exposition of your position and the actions you propose to take. Best wishes.</i>
<i>Support proposal in principle. Would be comfortable with a period shorter than 30 years for payments to Trustpower users. Definitely do not support a longer period than 30 years.</i>
<i>Fully support proposed way forward with one possible modification of reducing the size (\$) and duration of annual payment to the locked-in current Trustpower customers. Proposal is very generous and unnecessary.</i>
<i>I agree in principle with the TECT proposal but disagree with the proposed Annual Rebate structure. In my view the Trust should seek to rebate the funds at a higher rate at the beginning of the 30 year distribution period and reduce the rate towards the end of the period - the reverse of the present proposal.</i>



## b. GENERAL OBJECTION

A number of submitters had a general objection to the proposal with limited rationale for their view. These numbered approximately 5% of submissions received.

<i>Oppose proposal. Trust should retain its current structure which enables alternative investment options . Future generations will be disadvantaged by the proposal. Get declaratory judgement to legally determine whether proposal is lawful .</i>
<i>This seems a re-run of the attempt several years ago, by TECT, to change the distribution of income in favour of grants to the detriment of consumers..... I am opposed to this proposal.</i>
<i>I do not believe this proposal is in the best interest of beneficiaries.</i>
<i>That I oppose the current TECT Proposal 2021 in its entirety on the grounds that the proposal is not equitable in the way it is treating the existing Consumer Beneficiaries. The deal proposed is not fair to them and effectively unjustly enriches and favours the Community charities aspect over the best interests of the Consumer Beneficiaries.</i>
<i>This proposal is the same as the 2018 proposal. It is a slower THEFT of the benefits consumers have enjoyed since tect was established.</i>
<i>I oppose the proposal. The trust should be wound up upon Trustpower sale of its retail business and funds distributed to beneficiaries. Trustpower overcharges Tauranga customers to the equivalent of the rebate. This should be an alternative option for beneficiaries to submit on.</i>
<i>No! ABSOLUTELY NOT! What greedy people! No WAY do I agree with this!</i>

## c. KEEP THE REBATE

A key point raised by a number of consumers was that they would like to see the rebate payments maintained. These numbered approximately 12% of submissions received.

<i>I hope that we retain the rebate as it is a great benefit to us. As we are in our eighties we have no other way to get extra income. Interest rates are so low so no joy from there.</i>
<i>I want to see TECT rebate retained for beneficiaries and clients. this is a main reason for me staying with TRUSTPOWER</i>
<i>If the Tect rebate is no longer available for me, I will switch power companies. It is what holds me with Trustpower.</i>
<i>My feedback is to keep the Tect Rebate cheque going for those who need as my rebate helps me with what I need to get.</i>
<i>I am a beneficiary and the reason I chose Trustpower is because of the TECT refund, which helps so much as I live by my self and have little cash to splash out with. Please continue with it.</i>
<i>If i was to lose the rebate I would leave trustpower.</i>
<i>I am 73 and the tect cheque always makes my day. Would hate to lose it.</i>

## d. ELECTRICITY PRICING

One of the themes identified in the feedback received was electricity pricing. A key point raised by consumers was that Trustpower pricing is high in comparison to other providers and that the TECT rebate is an incentive to stay and essentially "offsets" the higher pricing. This was a theme in those that support and those that didn't support - many felt that pricing was too high and/or indicated that they would hope that the new buyer should not be able to benefit unfairly from the TECT rebate scheme. Approximately 4% of submitters noted this theme in their feedback.

<i>I oppose the proposal. The trust should be wound up upon Trustpower sale of its retail business and funds distributed to beneficiaries. Trustpower overcharges Tauranga customers to the equivalent of the rebate. This should be an alternative option for beneficiaries to submit on.</i>
<i>I would prefer TECT to be involved with a power company of their preference. Trust Power doesn't seem to want to put the effort in to run their business. They charge too much in any case.</i>

<i>It's our money, Because you over charge your customers, its rightly belong to them. So be honest, have a clear contionce and give it back, OR I'll change power companies.</i>
<i>Proceed very carefully. If the price of our power starts to increase too much &amp; too frequently &amp; if our rebate starts to decrease or is capped at a lesser &amp; lesser amount, you will loose customers, including myself.</i>
<i>agree with the TECT proposal to provide for dividends to customers over the next 30 years. Otherwise, Trustpower will lose more customers as it is not the cheapest provider - by a long way</i>
<i>Trustpower overcharges Tauranga customers to the equivalent of the rebate.</i>
<i>Sell shares, Invest in property - allow Capital gains to grow the investment and spend the profits on community projects &amp; rates redirection for the benefit of all Tauranga citizens.</i>
<i>Avoid individual payments to customers as this only subsidises power companies who then don't have to be market sensitive with their pricing.</i>

## e. WIND UP & FULL DISTRIBUTION

One of the themes was for the Trust to be wound up. A number of submitters (approximately 12%) argued that the trust should be wound up and the proceeds to be distributed in full to the current consumers.

<i>Wind up the TECT system, sell the shares in Trustpower &amp; give all the funds involved to the beneficiaries (account holders &amp; consumers). After all they are the shareholders of the company.</i>
<i>All the monies should be paid out in full to the beneficiaries. It is OUR money therefore it should be paid out in full. There is NO need to go all through this again when we voted against a Community Fund. Listen to the PEOPLE</i>
<i>If Trustpower is to be sold - I wish to have the full payout to the beneficiaries please. Hence no more TECT.</i>
<i>We support the winding up of TECT and the distribution of funds to the beneficiaries, because the scheme proposed only benefits those beneficiaries who are in the 45-50 year age group and younger. Winding up should be voted on by the beneficiaries</i>
<i>H there - my vote is to wind up TECT - payout to consumers and no more elected trustees!</i>
<i>We feel at this time that the TECT Trust should be wound up and the proceeds should be divided equally amongst the shareholders.</i>

Amongst these submitters there were several that argued that the consumer trust should be wound up now, or earlier and the proceeds transferred into a community trust.

<i>I oppose the proposal. Instead, TECT should be wound up and ALL the assets transferred to a long term community trust with all the proceeds being returned to the community at large and none to the current power consumers.</i>
<i>I generally support the TECT proposal but think that the timeframe for making the TECT beneficiary payments is rather too long. Ten years would in my opinion be more than adequate</i>
<i>I do not support the suggestion that existing customers get a lump sum payment. This would be an unmerited windfall for a limited number of individuals who are currently Trustpower customers, and would not further the purpose of the Trust to support the wider Tauranga and Western Bay of Plenty community.</i>
<i>Would be comfortable with a period shorter than 30 years for payments to Trustpower users. Definitely do not support a longer period than 30 years.</i>
<i>I would guarantee rebate cheques for ten years MAX and then stop so more money could go into new trust and more money could go back into significant community projects as the city needs so much to be done and we lack so many community assets compared to other cities our size.</i>

## f. LUMP SUM PAYMENT

Some submitters proposed that a lump sum payment should be made to current consumers. Approximately 6% noted this preference in their submission.

<i>Dissolve TECT and pay out lump sum from sale of 26.8%. Set up new trust with portion of sale proceeds for charity.</i>
<i>The other 80% balance of the Trustpower shareholding could be distributed amongst the current qualifying Shareholders (Beneficiaries). This could be done by cash payment after the sale of the shares or otherwise Shares could be directly issued to individuals. The method would allow the Beneficiaries to Sell or Hold their Shares as they see fit, and not be treated as pawns (mushrooms)</i>
<i>Don't make it so complicated! Cash up &amp; distribute half the fund! Create a new trust for the other half to make provision in the future for community organisations. Done.</i>
<i>My recommendation is to Wind up the Trust or at least 75% of it leaving 25% as a base for the community on going. The 75% could be divided among the qualifying beneficiaries which no doubt would be feed back into retail and the community over time</i>
<i>The rebate cheque has the effect of a customer subsidy underpinning the Trustpower share price. Maintaining this rebate enriches the sale price for the non TECT shareholders. It would be better if TECT puts aside some monies for community works &amp; distributes the rest following the disposal.</i>

## g. LEGALITY OF CHANGES CHALLENGED

Some submitters (approximately 2%) raised concerns over the legality of the proposal and whether Trustees were acting within their powers or in the best interest of beneficiaries.

<i>Trust should retain its current structure which enables alternative investment options . Future generations will be disadvantaged by the proposal. Get declaratory judgement to legally determine whether proposal is lawful .</i>
<i>I am opposed to aspects of this proposal which I strongly believe is presupposing the undecided outcomes of Trustpower's deliberations and decisions</i>
<i>The main point that I wish to make is, that you as Trustees are breaching your responsibilities of looking after and guarding the interest of the beneficiaries of TECT</i>
<i>Your proposal is contrary to the original purpose and intention (substratum) of the Trust and cannot be supported as being in the best interests of Consumers.</i>
<i>We believe that trustees owe a fiduciary duty to the beneficiaries of a trust and must act in the best interests of those beneficiaries. This proposal to strip TECT Consumers (the beneficiaries) of their assets and powers can only ever be against those beneficiaries' best interests</i>

## h. SALE OF TRUSTPOWER RETAIL

One of the themes raised was the potential sale of Trustpower with some consumers (approximately 2% of submitters) providing feedback that they did not agree with the sale, and / or that they felt TECT should attempt to block the proposal. This was despite the Trustees stating in the consultation documentation that the Trust had no blocking power, given TECT only holds a 26.8% shareholding, and if a shareholder vote were required then it would only require a 50% majority.

<i>I call on TECT as a major shareholder in the company to STOP and vote AGAINST the proposal to dispose of it's Retail business</i>
<i>Trust Power don't sell this great power company.</i>
<i>Don't want to see the retail sold at all. you went into it and you wanted to do that part and you have it built up and it would be shame to ditch the retail side.</i>
<i>I don't agree to Trustpower should be sold to outside of NZ. Tauranga Electric Power Board use to be 100% owners I guess greedee corporates will own most things in the future</i>
<i>TECT does not need to change; the sale of the retail business would constitute a substantial change to Trustpower hence will require a majority shareholder vote exceeding 75%. TECT holds 26.8% of shares, so can vote against the sale and effectively stop it.</i>

## i. TECT INVESTMENT APPROACH

A range of views (totalling 1% of submissions received) were noted regarding TECTs investment approach. Some of these related to the Trustpower shareholding, some related to investments held through the diversified portfolio, and some consumers mentioned the previous sale by TECT of its Tilt Renewables shares.

<i>I endorse that Tect's indirectly held shares in Trustpower by transferred into the proposed new trust.</i>
<i>I believe Trustpower should ensure the funds are invested so the money is protected in perpetuity. This way TECT members can continue to receive the TECT Cheque and community groups can continue to be supported, past the 30 year threshold being proposed. If the return to investors dips some years, that is not vital; it is more important to set up a permanent investment portfolio.</i>
<i>Sell shares, Invest in property - allow Capital gains to grow the investment and spend the profits on community projects &amp; rates redirection for the benefit of all Tauranga citizens.</i>
<i>My suggestion is for TECT to sell its shares in Trustpower and use the proceeds of the sale to make up a portfolio of selected Blue chips shares. Then carry on as usual?</i>

## j. FUTURE GRANT-MAKING APPROACH

A number of submitters (approximately 1%) provided comment on the future grant-making process or priorities.

<i>I agree with the New TECT Community Trust, mainly because if the protection of providing grants for local community based projects.</i>
<i>TECT has the chance to change the landscape of the region - no longer would people bemoan the lack of facilities; the region would get a name for its state-of-the art facilities, attracting more visitors, more investment such as hotels and businesses, and truly putting Tauranga on the national map.</i>
<i>I hope the New TECT Community Trust will keep the benefits for the Trustpower clients and community projects.</i>
<i>The region has been under-invested for very long time and subsequently the social cohesion impact is becoming critical (for example social housing, community &amp; sports facilities, performing arts etc.).</i>
<i>We advocate that TECT continues to offer funding support to the Western Bay of Plenty Schools and Education sector.</i>
<i>Plus also future funding of community projects. Rescue Helicopter, St John's etc</i>

## k. MAINTAIN STATUS QUO

A number of submitters (approximately 3%) made comment on their preference to maintain the status quo, or for Trustees to do nothing.

<i>Dont change anything its working perfectly well the way it is.</i>
<i>BACK OFF. IF IT AINT BROKE DONT FIX IT</i>
<i>Keep TECT as it is. We enjoy receiving our bonus every year. We are the community too.</i>
<i>i like the way it is thanks</i>
<i>Why try and fix something when it not broke</i>
<i>Why fix something that was not brocken people looked forward to that check before XMAS once the fat cats get fatter (be carefull you dont blow up) very disapointed I will look into a new provider in near future very dissapointed.</i>
<i>Keep things as they are: don't fix something not broken</i>

## I. RELATIONSHIP BETWEEN TRUSTPOWER & TECT

A number of submitters (approximately 1%) referenced the relationship between Trustpower and TECT. Some confuse the relationship, and others made comment on the past loyalty to Trustpower and through this to TECT.

<i>my mother passed away 10 years ago and I stayed on with Trust Power, so have been loyal customers for possibly 30 yrs or more - they give great service! Never thought of changing providers.</i>
<i>I feel that Trustpower may not be the right organisation to hold and distribute the funds to customers. And easy task if one has like Trustpower computers and a database for customers, that are Trustpower customers.</i>
<i>I see this as another attempt by the directors to push TECT as well as the small shareholders out of the company. This was tried a few years ago by a forced buy back of shares which the courts rejected.</i>
<i>We trust TrustPower trustees to make the right decision to retain our precious rebate</i>
<i>Once large cheque per year per shareholder of TECT should continue</i>
<i>I like the tect cheques as it make me feel like Trustpower appreciates me as a customer</i>
<i>one point addressed regarding The proposed change is due to 'shrinking beneficiary base - 100% of elect consumers were beneficiaries. Only 59% remain &amp; its decreasing" Why? Why have you not remained competitive. I want to support our communities. This needs to be addressed. Trust Power is a special part of our community we need it to be on par with other suppliers.</i>
<i>I have read Tect proposal very carefully I would like to request total repayment from my Tect shareholding. I am 80 years in June I have been a loyal customer with Trustpower since 1980. I will not live another 30 years to benefit from rebates for 30 years and I am sure the proposal will have been based on this likelihood (me and many others). Future generations can support the community I have done my fair share through Tect and request my share to be refunded now</i>
<i>As the Trustpower shares are ours ( the Trustpower customers ) should the sale of Trustpower go ahead , then the proceeds from the sale of our shares should be divided equally between all eligible shareholders and TECT should be disbanded.</i>
<i>Wind up the TECT system, sell the shares in Trustpower &amp; give all the funds involved to the beneficiaries (account holders &amp; consumers). After all they are the shareholders of the company.</i>

## m. MORE FOCUS ON COMMUNITY

A number of consumers (approximately 4% of submissions) provided feedback that they would like to see TECT do more in the community, or provide more funds dedicated to advancing community initiatives or causes.

<i>While we liked and appreciate the TECT rebate, we feel the contribution to community charity organisations/service organisations is more important</i>
<i>Approve TECT Proposal. But how good would it be for Tauranga if ALL of the funds could be invested in the community? I guess this won't happen so TECT Proposal a good compromise.</i>
<i>The proposals are reasonable, but in time the customer refund should be phased out and funding devoted to community benefit and facilities</i>
<i>I fully support this proposal - I must admit it was difficult to understand the quantum of funds invested in the proposed new TECT Community Trust, although I did understand it retains the shareholding in Trustpower. What I am swayed by is the statement that grants given to community groups and projects will increase by threefold over time. This I 100% support. In a world where community groups are under increasing funding pressure - due to pressure on the pokie trusts in particular, organisations like TECT will become increasingly important as a means of supporting the aspirations of community groups. These are generally run by volunteers who are also under increasing pressure. Whatever can be done to support them has our 100% support.</i>

*I am happy with the proposal, however it appears as though any unused funds retained to pay energy consumers rebates won't be able to be used for community purposes until the end of 30 years. When it would be added to the capital of the continuing trust. I would like to see maximum funds used for community grants.*

*I support the proposal the TECT trustees have put forward. I would also support a reduction in the number of years the rebate continues up to 10 years, and implore TECT to ensure the maximum allocation of funds possible to the community trust either now, or at windup of the Consumer Trust. The wider community has a greater need through the work of the community trust, than individuals who would not be financially disadvantaged if the rebate ceased and they switched to a cheaper power provider.*

*I am happy with the proposal, however it appears as though any unused funds retained to pay energy consumers rebates won't be able to be used for community purposes until the end of 30 years. When it would be added to the capital of the continuing trust. I would like to see maximum funds used for community grants.*

*I totally support setting up a new community trust. It seems a sensible way forward that should bring substantial benefits to the wider community in years to come.*

## 5. SUMMARY OF RESTRUCTURE OPTIONS

Based on the feedback received there are a number of options available to the Trustees. Below is a list of restructure options. This may not be a complete list, but it includes the options that were prominent in the submissions received.

1. **Stop the sale**
2. **Wait** – don't do anything until the TPW sale is concluded.
3. **Status quo / do nothing** - just let the new company be the successor
4. **Wind up**
  - a. distribute all funds to the current consumers
  - b. distribute all funds into a new community Trust
5. **80/20 capital split** - Split the capital using the 80/20 income split (i.e. 80% to consumer trust, 20% to community trust)
6. **Lump Sum payment**
  - a. Pay the 30 year rebates out now (lump sum) and set up community trust
  - b. A lump sum payment now, plus a rebate for a reduced number of years and set up community trust
7. **Reduced Timeframe for future rebates** - Current proposal but reduce number of years and put more into the community trust.
8. **No tie to future company** – the current proposal, but consumers not tied into the new company (i.e. can get power from anyone and receive rebate)
9. **A Lines Consumer Trust** – The Consumer Trust pays rebates to all people connected to power in WBOP.
10. **The Current Proposal** - the proposal put to consumers in the consultation process.

## 6. DECISION REQUIRED

The submission form identified that Trustees will carefully consider all submissions.

This report does not provide any commentary on the pro's and cons of each option. Further legal advice has been requested to understand the Trustees powers to implement these options.

If the Trustees decide to proceed, then the final proposal will be submitted to the High Court for their endorsement.

CONFIDENTIAL

# TAB 26





**TAURANGA ENERGY CONSUMER TRUST**

**("TECT")**

**RESOLUTION OF TRUSTEES**

---

**INTRODUCTION:**

1. The Trustees are the trustees of TECT, created under a deed of trust dated 21 December 1993 and as amended from time to time (the **Trust Deed**).
2. On 28 January 2021 Trustpower Limited (**Trustpower**) announced publicly that it is conducting a strategic review of its business, and that such review may involve the sale of the retail consumer electricity, gas and telecommunications businesses of Trustpower (**Retail Business**). The Trustees, having taken detailed advice and undertaken extensive discussions, concluded that a restructure of TECT is both necessary and appropriate as a consequence of the Trustpower announcement.
3. Accordingly the Trustees developed a restructuring proposal (the **Proposal**) which is outlined in **Annexure A** to these resolutions.
4. In accordance with the Trust Deed, the Trustees commenced a Consumer Consultative Procedure by way of the issuance of a Notice of Proposal to Consumers dated 18 February 2021 and a Consumer Information Memorandum of the same date. Accompanying the Notice of Proposal to Consumers and the Consumer Information Memorandum were (amongst other documents):
  - (a) A proposed varied trust deed for TECT (to be renamed the TECT Consumer Trust), annexed to these resolutions as **Annexure B**.
  - (b) A proposed trust deed for the new TECT Community Trust, annexed to these resolutions as **Annexure C**.
5. The Trustees duly received submissions received regarding the Proposal. More specifically, the Trustees have:
  - (a) received the written submissions from Consumers who did not wish to be heard;
  - (b) received the written submissions from Consumers who chose to be heard, attended a meeting on 25 March 2021 to hear the oral submissions of Consumers at that meeting, and received the additional written material presented to the Trustees at that meeting by Consumers; and
  - (c) received 11 late submissions after 22 March 2021,(together, the **Submissions**).
6. The Trustees have also received:
  - (a) a memorandum of advice from Chapman Tripp dated 9 April 2021 in respect of the **Submissions**;

- (b) the earlier memorandum of advice dated 18 February 2021 from Chapman Tripp in respect of the Proposal, together with the memorandum of Justin Smith QC dated 22 February 2021 in relation thereto; and
  - (c) the Board Report from Mr Wayne Werder prepared for the meeting of Trustees in Tauranga on 15 April 2021.
7. The Trustees met in Tauranga on 15 April 2021 and duly considered the Submissions, the Chapman Tripp memoranda of advice referred to above, the Board Report and the Proposal in light of these documents and matters, and such other matters as the Trustees considered appropriate. After a full discussion, the Trustees agreed to proceed with the proposal as presented for consultation on 18 February 2021, for reasons including those set out briefly below.
  8. Trustees considered that a restructure is appropriate in light of Trustpower's announcement, regardless of the outcome of Trustpower's current process. The Trustees considered that the proposal put to Consumers best responds to the structural concerns identified in the consultation materials. They are mindful that the change is significant, but consider it to be consistent with the long-term nature of TECT, and with its purpose. They understand it to be within their powers to implement and that it has received a suitable measure of support amongst beneficiaries. They see the 30 year rebate as allowing a suitable transition from the arrangements that beneficiaries have become familiar with.
  9. Accordingly the Trustees unanimously resolve as set out below.

---

**RESOLVED BY ALL TRUSTEES:**

1. To receive the Submissions, including to accept and receive the late submissions.
2. To confirm and approve the Proposal (subject to the approval of the High Court referred to in Resolution 4 below), including without limitation:
  - 2.1 the alteration and amendment of the terms of the Trust Deed such that the Trust Deed shall be as set out in Annexure B to these resolutions, such alteration and amendment only to take effect after receipt of orders of the High Court approving the same and with such further alterations and amendments as may be approved in accordance herewith; and
  - 2.2 the winding up of the TECT Charitable Trust created under a deed of trust dated 27 March 2002 and as amended from time to time in accordance with the Proposal and to instruct the trustees of the TECT Charitable Trust to proceed to wind up that trust subject only to the approval of the Court.
3. To instruct their solicitors to prepare and file on behalf of the Trustees all relevant documents with the Court as may be necessary to seek the approval of the Court to the Proposal including the alteration and amendment of the terms of the Trust Deed and the winding up of the TECT Charitable Trust each as referred to herein, such filings to include an application for the appointment of an independent counsel to assist the Court.
4. To delegate to the Trustee Subcommittee (Bill Holland, Natalie Bridges and Peter Farmer) authority to approve the final form of the applications to the Court referred to in Resolution 3 above.

---

**DATED:** 22 April 2021

**SIGNED** by the Trustees:

  
\_\_\_\_\_  
Bill Holland

  
\_\_\_\_\_  
Peter Farmer

  
\_\_\_\_\_  
Peter Blackwell

  
\_\_\_\_\_  
Natalie Bridges

  
\_\_\_\_\_  
Mark Arundel

  
\_\_\_\_\_  
Tina Jennen

## Annexure A – Proposal

- (a) TECT would be renamed the TECT Consumer Trust.
- (b) Consumers (as defined in the TECT Trust Deed) in the Tauranga and Western Bay of Plenty District (as defined in the TECT Trust Deed) who are Trustpower electricity customers, including retail, commercial & industrial customers (**Eligible Consumers**) at 9am on Thursday 28 January 2021 (**Record Date**) will continue to receive a rebate from TECT, irrespective of whether the Retail Business is sold, merged or kept.
- (c) Eligible Consumers would remain entitled to receive a rebate through to 2050 for so long as they remain electricity customers of Trustpower or of the buyer of the Retail Business, in each case in the District, subject to the funds being available in the Trust. Customers other than Eligible Consumers (including future customers of Trustpower or a buyer) will not receive a rebate.
- (d) The rebate will be \$500 a year for the first ten years and will then be adjusted to \$600 from 2030, and \$700 from 2040. It will be paid on a usual six monthly TECT cycle.
- (e) TECT would retain sufficient assets to pay for the rebates to Eligible Consumers (estimated currently to be approximately \$291 - \$413 million). Trustees have agreed to accept the top end of the range. The amount has been determined by using independent customer information from Trustpower to determine an appropriate churn assumption, and the financial modelling support from KPMG. The final calculations will be reviewed by Findex.
- (f) The proposal is for the TECT Consumer Trust to loan the retained funds to the new TECT Community Trust (below) which would pay interest on the loan.
- (g) TECT would distribute the balance of its assets to a new charitable trust (the **TECT Community Trust**), set up to benefit community and charitable groups and organisations in the Tauranga and Western Bay of Plenty regions.
- (h) While the Trustees expect based on financial modelling that sufficient funds will be retained in the Trust Fund after the settlement of the new Community Trust to pay rebates until December 2050, this is not guaranteed and events in the interim could prevent this (e.g. financial meltdown / default in loan repayment by the Community Trust / unexpected increase in numbers of ICPs).
- (i) TECT would be required to be wound up at the end of 2050, and its remaining assets would be distributed to the TECT Community Trust.
- (j) The existing TECT Charitable Trust will be wound up.

**Annexure B – Proposed varied trust deed for the TECT Consumer Trust**

**Annexure C – Proposed trust deed for the TECT Community Trust**

---

## TAB 27





**TECT CHARITABLE TRUST**  
**RESOLUTION OF TRUSTEES**

---

**INTRODUCTION:**

1. The Trustees are the trustees of TECT Charitable Trust (the **Trust**), created under a deed of trust dated 27 March 2002 and as amended from time to time (the **Trust Deed**), incorporated as a charitable trust board on 29 October 2015.
2. On 28 January 2021 Trustpower Limited (**Trustpower**) announced publicly that it is conducting a strategic review of its business, and that such review may involve the sale of the retail consumer electricity, gas and telecommunications businesses of Trustpower (**Retail Business**).
3. The Trustees of the Tauranga Energy Consumer Trust (**TECT**) have concluded that a restructure of TECT is both necessary and appropriate as a consequence of the Trustpower announcement. Accordingly the Trustees of TECT (the **TECT Trustees**) developed a restructuring proposal (the **Proposal**) pursuant to which the Trust would be wound up and its assets distributed to a new charitable Trust (the **TECT Community Trust**). The Proposal is annexed as Annexure A to these resolutions.
4. In accordance with the trust deed of TECT, the TECT Trustees commenced a Consumer Consultative Procedure by way of the issuance of a Notice of Proposal to Consumers dated 18 February 2021 and a Consumer Information Memorandum of the same date. Accompanying the Notice of Proposal to Consumers and the Consumer Information Memorandum was (amongst other documents) the proposed trust deed for the new TECT Community Trust, annexed to these resolutions as Annexure B.
5. After the undertaking of a Consumer Consultative Procedure and the consideration of submissions received as a consequence of that process, the TECT Trustees resolved to implement the Proposal subject only to the obtaining of orders of the High Court approving the alterations and amendments to the trust deed of TECT and the winding up of the TECT Charitable Trust amongst other relevant matters.
6. The Trustees met in Tauranga on 15 April 2021 and duly considered the above matters, the documents referred to above and annexed hereto and such other matters as the Trustees considered appropriate.
7. Pursuant to clause 12 of the Trust Deed but subject to the approval of the High Court, the Trustees consider that they have the power to, and are required to, wind up the Trust and to distribute the net assets of the Trust to the new TECT Community Trust upon the establishment of that Trust, in accordance with the Proposal.
8. Accordingly the Trustees unanimously resolve as set out below.

---

**RESOLVED:**

1. To approve the winding up of the Trust in accordance with the Proposal and the distribution of the net assets of the Trust to the trustees of the TECT Community Trust for the purposes


thereof after the establishment of that trust, subject only to the approval of the High Court to the winding up of the Trust in accordance with the Proposal.

2. To instruct their solicitors to prepare and file on behalf of the Trustees all relevant documents with the Court as may be necessary to seek the approval of the Court to the winding up of the Trust in accordance with the Proposal and the distribution of the net assets of the Trust to the trustees of the TECT Community Trust for the purposes thereof after the establishment of that trust.
3. To delegate to a Trustee Subcommittee comprising Bill Holland, Natalie Bridges and Peter Farmer authority to approve the final form of the applications to the Court referred to in Resolution 2 above.

---

**DATED:** 22 April 2021

**SIGNED** by the Trustees:

  
\_\_\_\_\_  
Bill Holland

  
\_\_\_\_\_  
Peter Farmer

  
\_\_\_\_\_  
Peter Blackwell

  
\_\_\_\_\_  
Natalie Bridges

  
\_\_\_\_\_  
Mark Arundel

  
\_\_\_\_\_  
Tina Jennen

### Annexure A – Proposal

- (a) TECT would be renamed the TECT Consumer Trust.
- (b) Consumers (as defined in the TECT Trust Deed) in the Tauranga and Western Bay of Plenty District (as defined in the TECT Trust Deed) who are Trustpower electricity customers, including retail, commercial & industrial customers (**Eligible Consumers**) at 9am on Thursday 28 January 2021 (**Record Date**) will continue to receive a rebate from TECT, irrespective of whether the Retail Business is sold, merged or kept.
- (c) Eligible Consumers would remain entitled to receive a rebate through to 2050 for so long as they remain electricity customers of Trustpower or of the buyer of the Retail Business, in each case in the District, subject to the funds being available in the Trust. Customers other than Eligible Consumers (including future customers of Trustpower or a buyer) will not receive a rebate.
- (d) The rebate will be \$500 a year for the first ten years and will then be adjusted to \$600 from 2030, and \$700 from 2040. It will be paid on a usual six monthly TECT cycle.
- (e) TECT would retain sufficient assets to pay for the rebates to Eligible Consumers (estimated currently to be approximately \$291 - \$413 million). Trustees have agreed to accept the top end of the range. The amount has been determined by using independent customer information from Trustpower to determine an appropriate churn assumption, and the financial modelling support from KPMG. The final calculations will be reviewed by Findex.
- (f) The proposal is for the TECT Consumer Trust to loan the retained funds to the new TECT Community Trust (below) which would pay interest on the loan.
- (g) TECT would distribute the balance of its assets to a new charitable trust (**the TECT Community Trust**), set up to benefit community and charitable groups and organisations in the Tauranga and Western Bay of Plenty regions.
- (h) While the Trustees expect based on financial modelling that sufficient funds will be retained in the Trust Fund after the settlement of the new Community Trust to pay rebates until December 2050, this is not guaranteed and events in the interim could prevent this (e.g. financial meltdown / default in loan repayment by the Community Trust / unexpected increase in numbers of ICPs).
- (i) TECT would be required to be wound up at the end of 2050, and its remaining assets would be distributed to the TECT Community Trust.
- (j) The Trust (i.e. the TECT Charitable Trust) will be wound up.

**Annexure B – Proposed trust deed for the TECT Community Trust**

## TAB 28





Trustpower Limited

Head Office  
108 Durham Street  
Tauranga

Postal Address:  
Private Bag 12023  
Tauranga Mail Centre  
Tauranga 3143

F 0800 32 93 02

Offices in  
Auckland  
Wellington  
Christchurch  
Damaru

Freephone  
0800 87 87 87

[trustpower.co.nz](http://trustpower.co.nz)

**Wednesday 28 April 2021**

**Market announcement**

### **Update on Trustpower strategic review**

Trustpower advises that it has received a number of non-binding indicative proposals to acquire its mass market retail business, following its announcement of a strategic review in January.

Trustpower's Board has reviewed the proposals and has progressed into the due diligence stage of the process.

A further update to the market on the strategic review will be provided in due course.

ENDS





## TAB 29



12 May 2021

From: Michael Arthur  
Direct: +64 9 357 9296  
Mobile: +64 27 209 4999  
Email: michael.arthur@chapmantripp.com  
Ref: 100414205/8410545.9

Dear TECT Consumer

**TECT – NOTICE OF COURT APPLICATION  
NOTICE OF THE TRUSTEES’ APPLICATION TO THE HIGH COURT**

Chapman Tripp acts for the TECT Trustees.

As a Consumer of TECT, you will be aware of the TECT Trustees’ proposal to change TECT’s structure. On 18 February 2021, TECT put forward a proposal for consultation that outlines those proposed changes. The Trustees sought your views on the proposed new structure for TECT.

The Trustees have considered all the feedback received during the consultation process, and have unanimously resolved to proceed with the changes. The letter that accompanies this notice sets out a summary of the changes.

The Trustees explained during consultation that any changes proposed will be reviewed by the High Court, which will be asked to endorse the proposal and process. To that effect, on [date] May 2021, the Trustees filed an application in the Tauranga High Court seeking orders under section 133 of the Trusts Act 2019 that it is lawful and proper for the Trustees to implement the proposed changes to TECT.

The Trustees have also filed an interlocutory application for orders from the Court about how this proceeding should be served on interested parties including Consumers, and to seek a direction appointing Independent Counsel.

You are receiving this notice because you have an interest in the orders being sought from the Court. You have a right to access the Court documents. You have the right to participate in the High Court process and have your views heard, including by formally opposing the application should you wish to do so. Consumers wishing to participate in the High Court process are encouraged to seek legal advice.

**Accessing the Court documents**

You can access the Court documents in the following ways:

- by accessing or viewing the documents at: [www.tect.org.nz](http://www.tect.org.nz)
- by visiting the TECT office in person at The Collective, 145 17<sup>th</sup> Avenue, Tauranga
- by requesting a copy of the Court documents by:
  - emailing [info@tect.org.nz](mailto:info@tect.org.nz)



- calling 07 578 5094
- writing to TECT at The Kollektive, DX Box HP40007, Tauranga 3112

### **Representation – Independent counsel**

The Trustees considered it appropriate to seek orders appointing an Independent Counsel in this proceeding, and the High Court has appointed Jane Anderson QC as Independent Counsel. Ms Anderson's role as Independent Counsel is to assist the Court, rather than acting for any Consumer, by ensuring that a complete and balanced view is before the Court when determining this proceeding, including any relevant information and/or legal arguments in opposition to the orders sought by the Trustees. That is, to the extent Ms Anderson considers it appropriate in order to fulfil the independent counsel role, the information put before the Court may identify, for the Court's benefit, perspectives that contradict the Trustees' position that the proposed changes to TECT are lawful and proper exercises of their powers.

Ms Anderson has been provided with publicly available information about TECT and the Trustees' proposal, including the Trust Deed, notice of the proposal and Consumer Information Memorandum, and a complete set of written submissions received during the consultation process. Ms Anderson will receive all documents filed in the Court proceeding.

Ms Anderson's role as Independent Counsel requires her to form her own view about the information and arguments that she should present to the Court. In forming that view, Ms Anderson will have regard to Consumers' views opposing the proposed changes, as set out in their written and verbal submissions. Ms Anderson is not, however, instructed to represent any particular Consumer or group of Consumers, or advance every possible ground of opposition made during the consultation process.

### **Independent legal advice**

As we have said, Chapman Tripp acts for the Trustees of TECT. Chapman Tripp does not act for any Consumer or group of Consumers. You are entitled to appoint your own lawyers to take steps in this proceeding on your behalf if you wish to do so. A company or other corporation that wants to take steps in this proceeding or appear at any hearing must consult a solicitor immediately because:

- it can only carry on a proceeding in the court by a solicitor; and
- it cannot appear to conduct a proceeding except by counsel (unless there are exceptional circumstances).

If you cannot afford to meet the cost of taking steps in the proceeding, you may be entitled to assistance under the Legal Services Act 2011 and regulations made under that Act. The plaintiffs are not in receipt of legal aid for the purposes of this proceeding.

If you do instruct a lawyer to act in this matter, Chapman Tripp will communicate directly with that lawyer / law firm.

### **Key dates**

The Court has scheduled a [full day] hearing on [date] in the Tauranga High Court to hear the Trustees' application for orders approving the changes to TECT.



If you wish to oppose the Trustees' application, you must file in the Tauranga High Court a notice of appearance or a statement of defence and any affidavit(s) by [date]. Note that the registry hours of the court are from 9 am to 5 pm, except on court holidays.

Any documents you file in the Tauranga High Court must also be served on TECT by emailing the documents to both of [michael.arthur@chapmantripp.com](mailto:michael.arthur@chapmantripp.com) and [liora.bercovitch@chapmantripp.com](mailto:liora.bercovitch@chapmantripp.com). Provided that the documents are served by email, documents may also be:

- posted to Chapman Tripp at PO BOX 2206, Shortland Street, Auckland 1140; or
- hand delivered to Level 34 PwC Tower, 15 Customs Street West, Auckland 1010; or
- posted or hand delivered to the TECT office at The Collective, 145 17<sup>th</sup> Avenue, Tauranga.

The Trustees must then file and serve any further evidence by [date].

Yours sincerely

Michael Arthur  
Partner

draft



## TAB 30





May 2021

**Dear TECT beneficiary**

## **TECT TO PROCEED WITH CHANGES TO STRUCTURE, FOLLOWING CONSULTATION**

### **What you need to know:**

- Following a month-long consultation period with beneficiaries on proposed changes to the structure of the Trust, Trustees have decided to proceed with the implementation of the proposal.
- As a final step TECT has filed an application with the High Court for directions confirming the validity of the Trustees' decision. The restructure will only take effect if the High Court makes those directions.
- As part of this review process, an independent QC has been appointed to assist the Court in scrutinising whether Trustees are exercising their powers in an appropriate way.
- The TECT rebate is protected for existing beneficiaries under the new structure for approximately 30 years.
- If you'd like to know more, read on or go to [www.tect.org.nz](http://www.tect.org.nz)

We are writing to confirm that Trustees have decided to proceed with changes to the structure of TECT.

The changes and consultation followed Trustpower's announcement in January that it was undertaking a strategic review of its retail business, including a possible sale. On 28 April 2021, Trustpower announced that it is progressing due diligence with interested buyers of its retail business, though the outcome of that process is yet to be known.

A sale of Trustpower's retail business to a third party would mean that TECT beneficiaries would no longer be Trustpower's 49,000 Tauranga and Western Bay local retail customers. Instead, TECT's beneficiaries would only be a small number of larger commercial electricity users that will remain customers of the Trustpower Generation business.

The structure of TECT needs to be updated to ensure that we meet our obligations as Trustees under the Trust Deed and that TECT is meeting the purpose it was established for.

The proposal that was consulted on balances the protection of the annual TECT rebate for existing beneficiaries with the purpose for which TECT was established, while providing long-term benefit for all in Tauranga and the Western Bay.

791 written submissions were received during the consultation period, and 32 of these were heard during the oral hearing that took place on 25 March.

Trustees reviewed all feedback, and have adopted a final proposal for changes to the Trust, that is outlined below.

Trustees would like to thank all of you who engaged with the process and provided your views through a written submission, attendance at one of our consumer information sessions or at the oral hearing.

We are confident that the final proposal will ensure that TECT will continue to meet the purpose it was established for while future-proofing the rebate.

### **How is TECT changing?**

In considering options for a new structure for TECT and the transition to it, the Trustees have been guided by four key principles:

1. **TECT's purpose** – the purpose and intent for which TECT was created.
2. **Maintaining TECT's capital** – so that a trust can continue for future generations.
3. **Legal obligations and Trustee duties** – doing nothing is not an option.
4. **Fairness** – current beneficiaries and future generations all benefit.

The proposal therefore ensures that the rebate will continue to be paid for approximately 30 years, to every existing retail customer who remains an electricity customer of Trustpower or a buyer of Trustpower's Retail Business.



The steps for change include:

#### **Step 1:**

TECT would retain funds intended to be sufficient to pay a yearly rebate to all existing beneficiaries (as of **Thursday 28 January 2021**) for approximately 30 years (i.e., the intention is to retain enough funds to pay, based on current financial projections, rebates until 31 December 2050). The amount and structure of that retention has been developed using independent customer information from Trustpower to determine an appropriate churn assumption, and financial modelling from KPMG.

An existing beneficiary is essentially a customer of Trustpower in the defined Tauranga and Western Bay of Plenty District who is currently eligible to receive a rebate.

- The rebate will be \$500 a year for the first ten years, will increase to \$600 in 2030 and increase further to \$700 in 2040, to take account of inflation. \$500 was the averaged median rebate payment over the five previous years.
- Rebates will be paid on the usual six monthly TECT cycle.
- To receive a rebate a beneficiary must remain a customer of Trustpower or the buyer of the Retail Business (or a subsequent buyer), in the district - subject to limited exceptions. If you leave, the rebate stops<sup>1</sup>.
- New customers and the current customers of the new business do not become beneficiaries.
- At 31 December 2050, TECT must be wound up (if it has not been wound up earlier for example, due to the trust fund all having been paid out as rebates), and its remaining assets will go to the new TECT Community Trust described below.

There is no guarantee that rebates will be paid out until the end of 2050, but that is the current projection based on financial modelling. If the trust fund has been paid out in full earlier, TECT will be wound up and rebates will end.

The changes will be implemented by changing the TECT Trust Deed as summarised in the Consumer Information Memorandum dated 18 February 2021, such as changes to the definition of Consumer, the distribution clauses to lock in the rebates, the removal of the restrictions on selling Trustpower Shares, the provisions regarding trustees and the provisions about winding up.

#### **Step 2:**

The balance of TECT's funds (including its shareholding in Trustpower) would be transferred to a new long-term community trust focused on grants for local community projects.

The Consumer Information Memorandum sets out the reasons why TECT is changing this way. The changes to TECT's structure will help resolve the challenges explained and make sure that Trustees are meeting their obligation to maximise the benefit of the Trust for all beneficiaries.

#### ***What now?***

As a final step we have made an application to the High Court for directions confirming the validity of our decision. The proposed restructure will only proceed if the High Court makes those directions.

As part of this review process, an independent QC (Ms Jane Anderson QC) has been appointed to assist the Court in scrutinising whether Trustees are exercising their powers in an appropriate way.

You have the right to participate in the High Court process and have your views heard, including by formally opposing the application should you wish to do so. Consumers

---

<sup>1</sup> Some exemptions apply. See the proposed TECT Consumer Trust deed on the TECT website for more information.

wishing to participate in the High Court process are encouraged to seek legal advice. For more information on this process, please read the attached 'Notice of Court Application' enclosed with this letter.

If you would like to read the full proposal that was consulted on, please visit [www.tect.org.nz](http://www.tect.org.nz)

Yours sincerely,

**The Trustees of TECT**

DRAFT

# TAB 31



## TECT – DRAFT ADVERTISEMENT

### TAURANGA ENERGY CONSUMER TRUST - NOTICE TO CONSUMERS OF THE TRUSTEES APPLICATION TO THE HIGH COURT

On 18 February 2021, the TECT Trustees put forward a proposal on changes to TECT's restructure for consultation. The Trustees sought TECT Consumers' views on the proposed new structure for TECT.

The Trustees have considered all the feedback received during the consultation process, and have unanimously resolved to proceed with the changes.

On [date] May 2021, the Trustees filed an application in the Tauranga High Court seeking orders under section 133 of the Trusts Act 2019 that it is lawful and proper for the Trustees to implement the proposed changes to TECT.

The Trustees have also filed an interlocutory application for orders from the Court about how this proceeding should be served on interested parties including Consumers, and to seek a direction appointing Independent Counsel.

If you are a Consumer of TECT, you have an interest in the orders being sought from the Court. You have a right to access the Court documents. You have the right to participate in the High Court process and have your views heard, including by formally opposing the application should you wish to do so. Consumers wishing to participate in the High Court process are encouraged to seek legal advice.

#### Accessing the Court documents

You can access the Court documents in the following ways:

- by accessing or viewing the documents at: [www.tect.org.nz](http://www.tect.org.nz)
- by visiting the TECT office in person at The Collective, 145 17<sup>th</sup> Avenue, Tauranga
- by requesting a copy of the Court documents by:
  - emailing [info@tect.org.nz](mailto:info@tect.org.nz)
  - calling 07 578 5094
  - writing to TECT at The Collective, DX Box HP40007, Tauranga 3112

#### Key dates

The Court has scheduled a [full day] hearing on [date] in the Tauranga High Court to hear the Trustees' application for orders approving the changes to TECT.

If you wish to oppose the Trustees' application, you must file in the Tauranga High Court a notice of appearance or a statement of defence and any affidavit(s) by [date]. Note that the registry hours of the court are from 9 am to 5 pm, except on court holidays.

Any documents you file in the Tauranga High Court must also be served on TECT by emailing the documents to both of [michael.arthur@chapmantripp.com](mailto:michael.arthur@chapmantripp.com) and



[lora.bercovitch@chapmantripp.com](mailto:lora.bercovitch@chapmantripp.com). Provided that the documents are served by email, documents may also be:

- posted to Chapman Tripp at PO BOX 2206, Shortland Street, Auckland 1140; or
- hand delivered to Level 34 PwC Tower, 15 Customs Street West, Auckland 1010; or
- posted or hand delivered to the TECT office at The Collective, 145 17<sup>th</sup> Avenue, Tauranga.

draft